989

Customs Regulations
of the
United States

Department of the Treasury
U.S. Customs Service

Office of Regulations & Rulings
1989

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T 17.9:

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

NOTICE

The following looseleaf version of the Customs Regulations, contained in title 19, Chapter I, Code of Federal Regulations, has been made and published for the purpose of implementing the customs, navigation, and other laws enforced and administered by the Customs Service. They shall be strictly observed and complied with all cases, unless compliance therewith is expressly waived in writing.

This volume may be cited as the "Customs Regulations" or as "19 CFR Ch. I" (Title 19, Code of Federal Regulations Chapter I).

These regulations have been issued by the Commissioner of Customs with the approval of the Secretary of the Treasury, pursuant to the applicable statutory provisions as cited, and pursuant to orders of the Secretary of the Treasury relating to the rights, privileges, powers, and duties of the Commissioner of Customs and other personnel in the Customs Service (Treasury Department Order No. 165, Revised (T.D. 53654) and subsequent Treasury Department Orders, as reproduced on the following pages).

This print includes all changes to the Customs Regulations through January 1, 1989, (Treasury Decision 89-3). While every effort has been made to ensure corrections, users may notify the U.S. Customs Service, Regulations and Disclosure Law Branch, Room 2119, Washington, D.C. 20229, (202) 566-8237, of any printing errors in order that corrections may be made. Suggestions for improvement also are requested.

DATED: April 11, 1989

William von Raab
Commissioner of Customs

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

(T.D. 53654)

Treasury Department Order No. 165, Revised

Delegation to the Commissioner of Customs of general authority over functions in the Bureau of Customs

Treasury Department,
Washington, D.C., Nov. 2, 1954.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp. Ch. III), it is hereby ordered:

1. There are hereby transferred to the Commissioner of Customs the functions of all officers, employees, and agencies of the Bureau of Customs and, subject to the exceptions hereinafter specified, all the rights, privileges, powers, and duties vested in the Secretary of the Treasury by the Tariff Act of 1930, as amended, by the navigation laws administered by the Bureau of Customs, or by any other law to the extent that it is administered by the Bureau of Customs.

(a) Regulations shall be prescribed by the Commissioner of Customs, with the approval of the Secretary of the Treasury, except that regulations and instructions, not inconsistent with the general rules and regulations of the Treasury Department, which are effective only against persons in their capacity as officers, agents, or employees of the Customs Service, and which do not prescribe procedures which the public should know or follow in dealing with the Customs Service, may be prescribed by the Commissioner of Customs without the approval of the Secretary of the Treasury.

(b) Requirements of regulations which may be waived in accordance with law may be waived by the Commissioner of Customs.

(c) Determinations under § 201(a), Antidumping Act, 1921, as amended, that a class or kind of foreign merchandise is being, or is likely to be, sold in the U.S. or elsewhere at less than its fair value shall be made, advice to the U.S. Tariff Commission of each such determination shall be given, and public notice of his determination and the determination of the said Commission, (the "finding" contemplated by § 201(a), *supra*) shall be given, by the Secretary of the Treasury. **[TD 55515.]**

(d) The ascertainment, determination, or estimation, and declaration of bounties or grants under § 303, Tariff Act of 1930, shall be made by the Commissioner of Customs with the approval of the Secretary of the Treasury, except that, when the Commissioner, with the approval of the Secretary, has determined and declared a rule for calculating or estimating the net amount of any such bounty or grant, any customs officer authorized by the Commissioner of Customs may ascertain and determine, or estimate, the net amount of the bounty or grant paid or bestowed in respect of each particular lot of imported merchandise.

(e) Findings under § 307, Tariff Act of 1930, whether any class of goods, wares, articles, or merchandise is mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions, and findings whether such goods, wares, articles, or merchandise so mined, produced, or manufactured are mined, produced or manufactured in such quantities in the U.S. as to meet the consumptive demands of the U.S., shall be made by the Commissioner of Customs with the approval of the Secretary of the Treasury.

(f) Any authority which may be vested in the Secretary of the Treasury by a proclamation of the President made pursuant to § 318, Tariff Act of 1930, shall be exercised by the Secretary of the Treasury.

(g) Any order under § 511, Tariff Act of 1930, prohibiting the importation of merchandise or instructing a collector to withhold delivery of merchandise shall be made by the Commissioner of Customs with the approval of the Secretary of the Treasury.

(h) Any decision with respect to any claim (including claim for liquidated damages), fine, or penalty (including forfeiture) in excess of $100,000 shall be made by the Secretary of the Treasury, except decisions with respect to claims (including claims for liquidated damages), fines, or penalties (including forfeitures) incurred or arising under: **[TDs 53966, 12/5/55; 54234, 10/29/56; 56276, 9/23/64.]**

(1) Section 3114, Revised Statutes, as amended (19 U. S. C. 257), for failure to report, make entry, and pay duties on certain equipments and repairs for certain vessels;

(2) Section 432, Tariff Act of 1930 (19 U.S.C. 1432), for omitting from the vessel manifest any articles to be retained on board as sea stores, ship's stores, or bunker coal or bunker oil, or for landing any such articles without the required permit;

(3) Section 453, Tariff Act of 1930 (19 U.S.C. 1453), for lading or unlading merchandise or baggage valued at $500 or more without obtaining the required license or permit;

(4) Section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report or to file a manifest as required by § 459, Tariff Act of 1930, as amended (19 U.S.C. 1459) in the following cases;

(i) Violations due to ignorance of the reporting requirements or to inadvertence and either no merchandise, or only typical personal or souvenir merchandise which would have been free of duty, if entered, is carried on the vessel or vehicle, or

(ii) Where the violation is the first offense, although not due to ignorance or inadvertence, and no intended commercial use or threat to the revenue is involved;

(5) Section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for having on board, or unlading from, a vessel or vehicle, any merchandise which is not included or described in the manifest or does not agree therewith;

(6) Section 8 or 20[illegible] (b), Anti-Smuggling Act, approved August 5, 1935 (19 U.S.C. 1708, 1584), for failure of a vessel not exceeding 500 net tons importing spirits, wines, or other alcoholic liquors to have the certificate required by § 7 of the Anti-Smuggling Act (19 U.S.C. 1707);

(7) Section 585, Tariff Act of 1930, as amended (19 U.S.C. 1585), in respect of any vessel or vehicle which departs or attempts to depart from any collection district without making the required report or entry, or unlades any merchandise before such report or entry;

(8) Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592); **[TD 73-261.]**

(9) The Act of February 24, 1915 (46 U.S.C. 14), for false oath to obtain a register for a wrecked vessel;

(10) Section 4143, Revised Statutes (46 U.S.C. 21), for false oath as to ownership by owner to obtain registry of vessel;

(11) Section 4163, Revised Statutes (46 U.S.C. 33), for false oath by agent or attorney to obtain registry of a vessel;

(12) Section 4177, Revised Statutes, as amended (46 U.S.C. 45), in respect of documented vessels failing to have the required number permanently marked;

(13) Section 4179, Revised Statutes (46 U.S.C. 50), for changing, or engaging in deceptive practices with respect to, the name of a documented vessel;

(14) Section 4189, Revised Statutes, as amended (46 U.S.C. 60), in respect of any vessel for which any certificate of registry, enrollment or license, or other record or document granted in lieu thereof is knowingly and fraudulently obtained or used;

(15) Section 4153, Revised Statutes, as amended (46 U.S.C. 77), in respect of documented vessels for failing to have the number denoting net tonnage permanently marked;

(16) Section 4339, Revised Statutes (46 U.S.C. 272), for refusal to take, or for taking falsely, the required oath with respect to equipment and repairs for vessels;

(17) Section 4337, Revised Statutes (46 U.S.C. 278), in respect of vessels proceeding on a foreign voyage while enrolled and licensed or licensed;

(18) Section 1 of the Act of May 28, 1906 (46 U.S.C. 292), in respect of foreign-built dredges engaging in dredging in the U.S.;

(19) Section 4365, Revised Statutes (46 U.S.C. 311), in respect of vessels licensed for the fisheries and found within three leagues of the coast with foreign merchandise exceeding $500 in value on board without having the permission to touch and trade at foreign ports required by § 4364, Revised Statutes (46 U.S.C. 310);

(20) Section 4370, Revised Statutes, as amended (46 U.S.C. 316 (a) and (d)), in respect of any vessel employed in towing in violation of subsection (a) of that section, as amended, or of any foreign vessel engaging in salvaging operations not excepted or authorized by subsection (d) of that section, as amended;

(21) Section 7, Act of June 9, 1886, as amended (46 U.S.C. 319), in respect to certain vessels trading coastwise, or engaged in the fishery, without a valid document and in respect of such vessels having on board foreign merchandise or taxable alcoholic liquors on which the duties or taxes have not been paid or secured to be paid;

(22) Section 4377, Revised Statutes, as amended (46 U.S.C. 325), in respect only of licensed vessels employed in any other trade than that for which licensed, found with a forged or altered license or one granted for any other vessel, or found with any foreign merchandise or taxable alcoholic liquors on board on which the duties or taxes have not been paid or secured to be paid;

(23) Section 4240, Revised Statutes (46 U.S.C. 723), in respect of any vessel transporting to a foreign port any property taken from a wreck within U.S. jurisdiction off the coast of Florida;

(24) Section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), in respect of merchandise transported coastwise in a vessel ineligible under that section to engage in such transportation;

(25) Bonds taken pursuant to § 308, Tariff Act of 1930, as amended (19 U.S.C. 1308), if the Commissioner is satisfied that the importation was properly entered under § 308 and there was no intent to defraud the revenue or delay the payment of duty;

(26) Bonds taken pursuant to § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), if the marking duty due under § 304 of the tariff act has been deposited and the Commissioner is satisfied that the importer was not guilty of negligence or bad faith in permitting the non-properly-marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery;

(27) Bonds taken pursuant to § 551, Tariff Act of 1930, as amended (19 U.S.C. 1551), if the Commissioner is satisfied that all the merchandise in respect of which the claim for liquidated damages was incurred has actually been reported or destroyed and that any failure to obtain customs supervision was without intent to evade any law or regulation;

(28) Bonds taken pursuant to § 565, Tariff Act of 1930 (19 U.S.C. 1565);

(29) Bonds taken pursuant to § 1 (par. 1101), Tariff Act of 1930, as amended (19 U.S.C. 1001, par. 1101), if no loss of revenue is involved;

(30) Any bond for failure to make entry and deposit estimated duties and taxes or for failure to produce required documents within the time required by the law or regulation, if the Commissioner is satisfied that such failure was not due to any purpose to evade any law or regulation;

(31) Section 2 of the Act of July 14, 1956 (46 U.S.C. 883a), in respect of certain vessels of more than 500 gross tons rebuilt abroad for which the required report of the circumstances of rebuilding is not made; and **[TD 54412; 8/1/57.]**

(32) Section 27A, Merchant Marine Act of 1920, as amended (46 U.S.C. 883-1), so far as that section imposes any fine or penalty (including forfeiture) for falsifying any certificate under oath or for transporting merchandise or passengers for hire. **[TD 54745; 12/4/58.]**

(i) An award of compensation to an informer under § 619, Tariff Act of 1930, shall be made by the Commissioner of Customs only with the approval of the Secretary of the Treasury when claimed in connection with any decision which has been acted upon or approved by the Secretary of the Treasury.

(j) The authority conferred by the President upon the Secretary of the Treasury by Executive Order 10289 (3 CFR, 1951 Supp., Ch. II) with respect to the organization of the Customs Service and to laws administered by the Bureau of Customs shall be exercised by the Secretary of the Treasury.

(k) Any decision as to whether to waive compliance with the navigation laws pursuant to the Act of December 27, 1950, 64 Stat. 1120 (46 U.S.C. Chapter 1 Note), shall be made by the Secretary of the Treasury, except that the Commissioner of Customs shall waive compliance with such laws upon the request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense. **[TD 74-175.]**

2. All functions, rights, privileges, powers, and duties transferred by this order may be delegated by the Commissioner of Customs to subordinates in the Bureau of

Customs in such manner as he shall from time to time direct.

3. This order revises Treasury Department Order No. 165, as issued on December 15, 1952 (T.D. 53160), and supersedes Treasury Department Order No. 165-1 (T.D. 53332), and shall other orders and instructions heretofore issued to the extent that such orders or instructions are inconsistent herewith. The purposes of this order are to eliminate from the citation of authority for the delegation § 3 of the Act of March 3, 1927 (5 U.S.C. 281b), which was repealed in pertinent part by § 10 of the Act of September 3, 1954, 68 Stat. 1229; to reissue the delegation so that it will cover all pertinent laws in effect on the date hereof; and to eliminate the requirement that findings of dumping under § 201(a), Antidumping Act, 1921, be approved by the Secretary and substitute therefor the above reservation to the Secretary of determinations of sales or likelihood of sales of merchandise at less than its fair value and the giving of advice of such determinations of the U.S. Tariff Commission. Delegations of authority heretofore issued by the Commissioner or Acting Commissioner of Customs pursuant to the Treasury Department Orders revised or superseded by this order are not affected hereby. (19 FR 7241, 11/6/54)

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

(T.D. 54803)

TREASURY DEPARTMENT ORDER NO. 165-2
Amendment 1

Treasury Department,
Washington, D.C., March 9, 1959.

Treasury Department Order No. 165-2 dated October 29, 1953, T.D. 53368 (18 F.R. 7177) transferred from the Commissioner of Internal Revenue to the Commissioner of Customs the function of refunding excess deposits of internal revenue tax, previously collected by collectors of customs, which are found to be due to the functions of determining, allowing, and paying interest in connection with such refunds.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp., Ch. III) there are hereby transferred from the Commissioner of Customs, to the Commissioner of Internal Revenue the functions of refunding such deposits, and of determining, allowing, and paying interest, in any case in which the allowance or making of the refund is not now or hereafter excepted from the application of § 6423 of the Internal Revenue Code of 1954, as added by the Act of February 11, 1958, (Public Law 85-323).

The functions herein transferred may be delegated by the Commissioner of Internal Revenue to subordinates in such manner as he shall direct.

In all other respects Treasury Department Order No. 165-2 dated October 29, 1953, shall remain in full force and effect.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(T.D. 54385)

TREASURY DEPARTMENT ORDER NO. 165-6

Delegation to the Commissioner of Customs of authority to make refunds of import tax under § 6418(a) of the Internal Revenue Code of 1954, as amended

Treasury Department,
Washington, D.C., June 26, 1957.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp., Ch. III) and § 6418(a) of the Internal Revenue Code of 1954, as amended, there is hereby delegated to the Commissioner of Customs the authority contained in § 6418(a) of the Internal Revenue Code, as amended, to make refunds of import taxes paid under § 4501 of the Internal Revenue Code of 1954, as amended, or any extensions thereof, with respect to manufactured sugar or articles composed in chief value of manufactured sugar.

The authority herein delegated may be redelegated by the Commissioner of Customs to other officers or employees of the Customs Service in such manner as the Commissioner shall direct.
(191.1)

DAVID W. KENDALL,
Acting Secretary of the Treasury.

(T.D. 54699)

Drawback of Internal Revenue Tax

Treasury Department Order No. 165-9 dated August 13, 1958 transfers and delegates to the Commissioner of Customs authority to allow drawback of internal revenue tax on domestic alcohol under § 313(d) of the Tariff Act of 1930, as amended

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., September 30, 1958.

To Collectors of Customs and Others Concerned:

There is published below for your information and guidance Treasury Department Order No. 165-9 dated August 13, 1958. It will be noted that the Order shall be effective January 1, 1959.
(733.1)

D.B. STRUBINGER,
Acting Commissioner of Customs.

TREASURY DEPARTMENT ORDER NO. 165-9

Transfer and delegation to the Commissioner of Customs of authority to allow drawback of internal revenue tax on domestic alcohol under § 313(d) of the Tariff Act of 1930, as amended

Treasury Department,
Washington, D.C., August 13, 1958.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp., Ch. III) there is hereby transferred from the Commissioner of Internal Revenue and delegated to the Commissioner of Customs the function, authorized by § 313(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), of allowing the drawback of an amount equal to the internal revenue tax found to have been paid on domestic alcohol used in the manufacture or production in the U.S. of flavoring extracts and medicinal or toilet preparations (including perfumery) that have been exported.

The function herein transferred and delegated may be delegated by the Commissioner of Customs to other officers or employees of the Customs Service in such manner as the Commissioner shall direct.

This Order shall be effective January 1, 1959.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

(T.D. 54696)

TREASURY DEPARTMENT ORDER NO. 165-10

Delegation to the Commissioner of Customs of function of publishing notice in the ***Federal Register*** required by § 201(b) of the Antidumping Act, 1921, as amended

Treasury Department,
Washington, D.C., September 23, 1958.

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp. Ch. III), there is hereby transferred to the Commissioner of Customs the function of publishing the notice in the ***Federal Register*** which is required by § 201(b) of the Antidumping Act, 1921, as amended by the Act of August 14, 1958, Public Law 85-630 (19 U.S.C. 160(b)).

(191.1)

A. GILMORE FLUES,
Acting Secretary of the Treasury.

(T.D. 55460)

Treasury Department Order No. 165-12

Delegation to the Commissioner of Customs of certain collection functions relating to imported tobacco materials, tobacco products, and cigarette papers and tubes, heretofore delegated to the Commissioner of Internal Revenue

Treasury Department,
Washington, D.C. August 29, 1961.

By virtue of the authority vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950 (3 CFR, 1950 Supp., Ch. III), and pursuant to authorization given to me by Treasury Department Order No. 190 (26 F.R. 7019), there are transferred from the Commissioner of Internal Revenue and delegated to the Commissioner of Customs the functions of collecting the taxes imposed on tobacco materials, tobacco products, and cigarette papers and tubes imported or brought into the U.S. on which internal-revenue taxes under § 5701 and § 7652 of the Internal Revenue Code, as amended, are due and payable at the time of release from customs custody in accordance with the method prescribed by regulations of the Internal Revenue Service.

It is hereby ordered that the provisions of Treasury Department Order No. 165-2 (18 F.R. 7177) and Amendment 1 thereof (24 F.R. 1991) are applicable to refunds of such collections.

The functions herein delegated to the Commissioner of Customs may be delegated by him to subordinates in such manner as he shall direct.

This order shall be effective October 1, 1961.

(26 FR 8400)

HENRY H. FOWLER,
Under Secretary of the Treasury.

(T.D. 55508)

Treasury Department Order No. 165-13

Establishment of Offices of Deputy Commissioner, Bureau of Customs

Treasury Department,
Washington, D.C., November 3, 1961.

By virtue of the authority vested in me as Secretary of the Treasury, there are hereby established in the Bureau of Customs new offices designated as Deputy Commissioner of Customs, as follows:

Deputy Commissioner, Division of Marine Administration
Deputy Commissioner, Division of Technical Services

(26 FR 10643)

DOUGLAS DILLON,
Secretary of the Treasury.

(T.D. 69-62)

Treasury Department Order No. 165-21 (Revision 1)

Delegation to the Commissioner of Customs of certain functions under the Customs Convention on the International transport of goods under cover of TIR carnets

Treasury Department,
Washington, D.C. February 17, 1969.

(1) By virtue of authority vested in the Secretary of the Treasury by Executive Order No. 11450 dated January 18, 1969 (34 F.R. 919), and pursuant to authorization provided by Treasury Department Order No. 190, Rev. 5 (33 F.R. 5811), the Commissioner of Customs is hereby designated to take all necessary action required of the U.S. under § 1 of Article 5 of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) to which the U.S. Senate gave its consent on March 1, 1967, and shall exercise his authority hereunder subject to the conditions set forth in § 2 of said Article 5.

(2) Treasury Department Order No. 165-21, differing in text but not is substance, is hereby rescinded.

(34 FR 2616, 2/26/69)

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

(T.D. 69-69)

Treasury Department Order No. 165-22

Rates Fixed for Reimbursable Services of Customs Officers and Employees in The Virgin Islands

Treasury Department,
Washington, D.C., February 26, 1969.

Under authority vested in the Secretary of the Treasury by § 36 of the Act of June 22, 1936, 49 Stat. 1816 (48 U.S.C. 1406i), to fix the compensation of officers and employees appointed for the administration of the customs laws in the Virgin Islands of the U.S. and pursuant to authorization provided by Treasury Department Order No. 190, Revision 5 (33 F.R. 5811), it is hereby ordered that:

1. The rates of extra compensation fixed under § 5 of the Act of February 13, 1911, 36 Stat. 901, as amended (19 U.S.C. 267), for services for which extra compensation would be payable under the Act or under § 451 of the Tariff Act of 1930, as amended (19 U.S.C. 1451), and the regulations thereunder for services performed in connection with the administration of the customs laws of the U.S. shall apply to customs officers and employees appointed for the administration of the customs laws in the Virgin Islands of the U.S.

2. Payment to customs officers and employees in the Virgin Islands for extra compensation shall be made from the Virgin Island Trust Fund. Collections from parties in interest for extra compensation will be made by the Government of the Virgin Islands under authority of its local laws.

3. The application of the rates fixed under 19 U.S.C. 267 to the Virgin Islands customs officers and employees will be subject to the regulations, decisions, directions for assignment and control of personnel, and the accounting procedures that are applicable to customs officers other than those in the Virgin Islands.

4. This order shall become effective on April 6, 1969, and shall apply to reimbursable services performed on and after that date.

Notices that the action taken by this Order was proposed were published in the ***Federal Register*** of July 20, 1967 (32 F.R. 10670, and December 31, 1968 (33 F.R. 20056).

(34 FR 3859, 3/5/69)

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

Treasury Department Order No. 165-25

Delegation of Authority to the Commissioner of Customs to Prescribe Regulations

Dated: August 5, 1982.

By virtue of the authority vested in the Secretary of the Treasury by Reorganization Plan No. 26 to 1950 and pursuant to the authority delegated to me as Assistant Secretary (Enforcement and Operations), by Treasury 101-5, notwithstanding the provisions of paragraph 1(a) of Treasury Department Order No. 165, Revised (T.D. 53654), there is hereby delegated to the Commissioner of Customs, authority to prescribe regulations relating to §§ 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f)).

JOHN M. WALKER, Jr.,
Assistant Secretary, (Enforcement and Operations).

Treasury Department Order No. 165-27

Delegation of Authority to the Commissioner of Customs for Disposition of Certain Conveyance Seizure Cases

Dated: June 6, 1984.

By virtue of the authority vested in the Secretary of the Treasury by Title 31, United States Code, Section 321(c), and pursuant to the authority delegated to me as Assistant Secretary (Enforcement and Operations) by Treasury Department Order No. 101-5, notwithstanding the provisions of paragraph 1(h) of Treasury Department Order No. 165, Revised (T.D. 53654), there is hereby delegated to the Commissioner of Customs authority to dispose of conveyances valued at not more than $500,000 which are seized because they have been used in the illegal transportation of any quantity of heroin, five (5) pounds or more of cocaine, ten (10) pounds or more of hashish, two hundred-fifty (250) pounds or more of any other controlled substance, or firearms in a quantity which is clearly in excess of what would be for personal use.

JOHN M. WALKER, Jr.,
Assistant Secretary,
(Enforcement and Operations).

(T.D. 69-126)

CUSTOMS DELEGATION ORDER NO. 1 (REVISION 1) AMENDED

Performance of functions in the U.S. Customs Service

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., May 20, 1969.

1. By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), as amended, the following officers in the headquarters office of the U.S. Customs Service are hereby authorized to make decisions and perform functions as follows:

A. Director, Office of Regulations and Rulings. Decisions with respect to any claim (including claim for liquidated damages), fine, or penalty (including forfeiture) now delegated to the Commissioner of Customs by paragraph (h) of Treasury Department Order No. 165, Revised, as amended, (supra), decisions with respect to appeals from denials of requests for information under 5 U.S.C. 552, decisions with respect to appeals from denials of requests for amendment of records under 5 U.S.C. 552a, decisions denying or approving requests for extension of the time for the submission of comments on proposed amendments to the Customs Regulations, decisions with respect to the application of decisions of the U.S. Customs Court and the U.S. Court of Customs and Patent Appeals adverse to the Government, and decisions and functions relating to all matters in which authority also is delegated by this Order to the Director, Classification and Value Division, the Director, Entry Procedures and Penalties Division and the Director, Carriers, Drawback and Bonds Division.

The Director, Office of Regulations and Rulings, is authorized to redelegate the authority delegated to him by this Order to appropriate Division Directors and Branch Chiefs in the Office of Regulations and Rulings at Customs Headquarters. **[TDs 72-42, 72-321, 73-293, 77-1, 77-200, 78-111, 79-225, 80-63.]**

(a) *Director, Classification and Value Division:*

(1) Decisions relating to the tariff classification, free and dutiable status of merchandise, including matters arising out of the Tariff Schedules of the United States, the qualification for the free entry of merchandise under § 321, Tariff Act of 1930, as amended, and the Trade Fair Act of 1959; legal aspects of valuation, dumping and countervailing duty determinations and procedures; and authorizations for liquidation or reliquidation of entries in matters relating to the above. **[TDs 72-42, 72-321.]**

(2) Decisions other than those enumerated heretofore in subparagraph (a), in matters arising under provisions of law administered in the Classification and Value Division. **[TDs 72-42, 72-321.]**

(b) *Director, Entry Procedures and Penalties Division:*

(1) Decisions with respect to the legal aspects of the entry of merchandise. **[TDs 72-42, 72-321.]**

(2) Decisions with respect to offers in compromise under 19 U.S.C. 1617, as amended, if recommended by the General Counsel of the Treasury Department. **[TDs 73-293, 80-63.]**

(3) All other decisions in matters arising under provisions of law administered in the Entry Procedures and Penalties Division. **[TDs 77-200, 80-64.]**

(c) *Director, Carriers, Drawback and Bonds Division:*

(1) Decisions relating to the legal aspects of entry, clearance, use and dutiability of vessels and aircraft, vehicles and other carriers, their equipment and repairs and other maritime activities, connected with the administration of the laws administered by the U.S. Customs Service. **[TD 72-321.]**

(2) Decisions with respect to the designation of instruments of international traffic and to the legal aspects of control over such instruments. **[TD 75-317.]**

(3) Decisions relating to legal questions about bonds, bonded warehouses, the entry of articles under items 820.40, 820.50 and Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States, and drawback rates and collateral drawback matters.

(4) Decisions, other than those enumerated heretofore in this subparagraph (c), in matters arising under provisions of law administered in the Carriers, Drawback and Bonds Division. **[TD 72-321.]**

B. ASSISTANT COMMISSIONER OF CUSTOMS, OFFICE OF OPERATIONS:

Decisions and functions relating to all matters in which authority also is delegated by this Order to the Director, Inspection and Control Division, and the Director, Appraisement and Collections Division. **[TD 72-321.]**

(a) *Director, Inspection and Control Division:* **[TD 72-321.]**

(1) Decisions concerning (i) requests for permission for scheduled aircraft to land elsewhere than at an international airport, and (ii) the establishment and changing of hours of service at ports of entry, stations, and offices.

(2) Decisions, other than those heretofore enumerated in this subparagraph (a), regarding procedural and operational matters relating to the functions administered by the Inspection and Control Division. **[TD 72-321.]**

(b) *Director, Appraisement and Collections Division:* **[TD 72-321.]**

(1) Decisions interpreting and applying factual information concerning matters of value (value decisions, final list, etc.).

(2) Decisions regarding the proper statistical classification of merchandise.

(3) Decisions, other than those heretofore enumerated in this subparagraph (b), regarding procedural and operational matters relating to the functions administered by the Appraisement and Collections Division. **[TD 72-321.]**

2. Each of the officials hereby designated will perform under this authority in his own capacity and under his own title and shall be responsible for referring to the Commissioner of Customs any matter of exceptional importance or which involves some special factor requiring that action be taken by the Commissioner of Customs.

3. The delegations made by this Order relate to decisions to be made and functions to be performed at the headquarters office of the Bureau of Customs, and no such delegation to these officers shall be interpreted as revoking or modifying any delegation made to the Customs field officers.

4. Customs Delegation Order No. 1 (T.D. 53161; 17 F.R. 11705), as amended by T.D. 53694, 19 F.R. 8756; T.D. 53914, 20 F.R. 7554; T.D. 54654, 23 F.R. 5962; T.D. 55431, 26 F.R. 6628; T.D. 55543, 27 F.R. 262; T.D. 55823, 28 F.R. 1267; T.D. 55946, 28 F.R. 7611; T.D. 56262, 29 F.R. 13350;

T.D. 56293, 29 F.R. 14860; and T.D. 66-4, 31 F.R. 226, is rescinded. However, all delegations of authority to Customs officers and employees, whether in the headquarters office of the Bureau of Customs in Washington, or in the field, heretofore made in the Customs Regulations of 1943, as amended (19 CFR, Chapter II), or any other regulation, order, or instruction, other than those in Treasury Decisions 52209, 52330, 52331, and 52394 (14 F.R. 2244, 6533, 6534, 15 F.R. 589), heretofore superseded, are continued in effect unless and until otherwise prescribed. Further, all functions which immediately prior to the effective date of Reorganization Plan No. 26 of 1950 (15 F.R. 4935) were vested by law in Customs officers other than the Commissioner of Customs (which have been performed by such officers or by their successors under Reorganization Plan No. 1 of 1965 (3 CFR 1964-1965 Comp.) and under Treasury Order No. 120, dated July 31, 1950 (15 F.R. 6521)), shall continue to be performed by such officers or by their successors unless and until otherwise prescribed.
(34 F.R. 8208, 5/27/69)

LESTER D. JOHNSON,
Commissioner of Customs.

(T.D. 53195)

CUSTOMS DELEGATION ORDER NO. 2

Delegation of authority to certain field officers of the Customs Service to administer oaths and to designate customs officers and employees under their supervision to administer oaths

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., February 4, 1953.

By virtue of the authority vested in me by Treasury Department Order No. 165 (T.D. 53160, 17 F.R. 11705), I hereby authorize all principal field officers of the Customs Service, their chief assistants, and such other customs officers as may be designated in writing by such principal officers, to administer oaths required by law or regulation in respect of any matter coming before them in the performance of their official duties.

FRANK DOW,
Commissioner of Customs.

(T.D. 53242)

CUSTOMS DELEGATION ORDER NO. 3

Delegation of authority to collectors of customs of the several districts to attest certificates of registry

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., April 21, 1953.

By virtue of the authority vested in me by Treasury Department Order No. 165 (T.D. 53160, 17 F.R. 11705), I hereby authorize the collectors of customs of the several districts to perform the function of attesting certificates of registry under seal and by signature heretofore performed by the Commissioner of Customs under the authority of § 4158 of the Revised Statutes of the U.S., as amended (46 U.S.C. 28).
(211.13)

D.B. STRUBINGER,
Acting Commissioner of Customs.

(T.D. 53333)

CUSTOMS DELEGATION ORDER NO. 5

Delegation to officers of the Bureau of Customs of authority transferred by the Secretary of the Treasury to the Commissioner of Customs by Treasury Department Order No. 165-1

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., August 13, 1953.

Pursuant to Treasury Department Order No. 165-1, published as T.D. 53332 (18 F.R. 5370), it is hereby ordered:

1. So much for each function trasferred to the Commissioner of Customs by Treasury Department Order No. 165-1 (T.D. 53332; 18 F.R. 5370) as is within the description of any function heretofore delegated by Customs Delegation Order No. 1 (T.D. 53161; 17 F.R. 11705) is hereby delegated to the respective customs officers to which such function was delegated by that order, subject to the pertinent conditions therein prescribed. So much of each function so transferred to the Commissioner of Customs as is within the description of any function covered by a delegation continued in effect by paragraph 3 of Customs Delegation Order No. 1 is hereby delegated to the respective officers and employees who are authorized to perform such function heretofore delegated.

2. There is hereby delegated to all officers of the Customs Service the authority to make seizures of arms or munitions of war and other articles, vessels, vehicles, and aircraft under the Act of August 13, 1953 (67 Stat. 577), amending § 1 of title VI of the Act of June 15, 1917 (40 Stat. 233), as amended (22 U.S.C. 401).
(191.1)

D.B. STRUBINGER,
Acting Commissioner of Customs.

(T.D. 53369)

CUSTOMS DELEGATION ORDER NO. 6

Delegation to collectors of customs of authority transferred by the Secretary of the Treasury to the Commissioner of Customs by Treasury Department Order No. 165-2

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., October 29, 1953.

Pursuant to Treasury Department Order No. 165-2, published as T.D. 53368, it is hereby ordered:

The functions of refunding excess deposits of internal-revenue tax, collected by collectors of customs, and of determining, allowing, and paying interest in connection with such refunds, transferred to the Commissioner of Customs

by Treasury Department Order No. 165–2, are hereby delegated to collectors of customs.
(142.56)

D.B. STRUBINGER,
Acting Commissioner of Customs.

(T.D. 53511)

Customs Delegation Order No. 7

Order of the Commissioner of Customs establishing the office of the surveyor of customs at New York, New York, as a division in the office of the collector of customs at that port

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., June 15, 1954.

By virtue of the authority vested in me by Treasury Department Order No. 165 (T.D. 53160, 17 F.R. 11705), I hereby establish the office, staff, and equipment of the surveyor of customs at New York, N.Y., as the office, staff, and equipment of a division of the office of the collector of customs at that port, the said surveyor to administer that division under the immediate direction of the collector of customs; and I hereby transfer from the said surveyor to the said collector such authority and functions vested in the said surveyor by Customs Delegation Order No. 1 (T.D. 53161, 17 F.R. 11706) as served to maintain the office of the surveyor as an administrative unit separate from and outside the organization of the collector of customs.
(191.1)

RALPH KELLY,
Commissioner of Customs.

(T.D. 54430)

Customs Delegation Order No. 12

Transfer from appraisers of merchandise to collectors of customs of the function of determining the values of merchandise unclaimed and abandoned to the Government where the appraised value of the lot is not in excess of $250

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., September 6, 1957.

By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), I hereby transfer from the appraisers of merchandise to the collectors of customs the function of determining the appraised value under § 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1402), and the actual domestic value in its condition at the time and place of examination, of any unclaimed merchandise abandoned to the Government, where the aggregate appraised value of the lot as determined by the collector is not in excess of $250.

RALPH KELLY,
Commissioner of Customs.

(T.D. 55463)

Customs Delegation Order No. 17

Delegation to collectors of customs of authority transferred by the Secretary of the Treasury to the Commissioner of Customs by Treasury Department Order No. 165–12

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., August 31, 1961.

Pursuant to Treasury Department Order No. 165–12 published as T.D. 55460, it is hereby ordered:

The function of collecting deposits of internal revenue tax on imported tobacco materials, tobacco products, and cigarette papers and tubes, delegated to the Commissioner of Customs by Treasury Department Order No. 165–12 is hereby delegated to collectors of customs, and:

The provisions of Customs Delegation Order No. 6 of October 29, 1953, published as T.D. 53369 (18 F.R. 7177), shall apply to excess deposits of such taxes collected by collectors of customs.
(26 F.R. 8400)

D.B. STRUBINGER,
Acting Commissioner of Customs.

(T.D. 55917)

Customs Delegation Order No. 20

The function of determining the value of vessels, vehicles, merchandise or baggage seized under the customs laws transferred from the appraisers of merchandise to the collectors of customs if the value does not exceed $500, and to the officers of the Customs Agency Service in certain cases where the value does not exceed $100.

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., June 10, 1963.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), I hereby transfer from the appraisers of merchandise to the collectors of customs the function under § 606 of the Tariff Act of 1930 (19 U.S.C. 1606) of determining the domestic value, at the time and place of appraisement, of any vessel, vehicle, merchandise, or baggage seized under the customs laws, in any case where the aggregate value of the seizure does not exceed $500.

I also authorize the supervising customs agents, or other officers of the Customs Agency Service designated by them, to perform said function in any case where the aggregate value of the seizure does not exceed $100 and the seizure was made by an officer of the Customs Agency Service.

This order supersedes Customs Delegation Order No. 15, dated September 24, 1959 (T.D. 54949, 24 F.R. 7968).
(28 F.R. 6235)

PHILIP NICHOLS, Jr.,
Commissioner of Customs.

(T.D. 56470)

Customs Delegation Order No. 22

Order of the Commissioner of Customs delegating functions, rights, privileges, powers, and duties to customs field officers

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., August 24, 1965.

By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), there are hereby delegated to district directors of customs and to regional commissioners of customs all functions, rights, privileges, powers, and duties now vested in collectors of customs and all those now vested in appraisers of merchandise, effective on the dates that the creation of said offices of district directors and regional commissioners become effective under Treasury Department Order No. 165-17 (T.D. 56464, 30 F.R. 10913).
(30 F.R. 11180, 8/31/65)

LESTER D. JOHNSON,
Commissioner of Customs.

(T.D. 67-7)

Customs Delegation Order No. 28

Order of the Commissioner of Customs delegating functions, rights, privileges, powers, and duties to Port Directors

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., December 7, 1966.

By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), all functions, rights, privileges, powers, and duties delegated to district directors of customs and to regional commissioners of customs by Customs Delegation Order No. 22 (T.D. 56470, 30 F.R. 11180) and delegated to the assistant regional commissioners and deputy regional commissioner for Customs Region II, New York City, New York, by Customs Delegation Orders No. 23 (T.D. 66-100, 31 F.R. 7150) and No. 24 (T.D. 66-113, 31 F.R. 7842), respectively, are hereby delegated also to port directors.

Ordinarily each Port Director will exercise the authority delegated herein only where statute, regulation, or instruction contemplates that the Port Director should take action at the port over which he has supervision.

This delegation is effective as of the date of the creation of the several regions in which the ports are located.
(31 FR 16581, 12/28/66)

EDWIN F. RAINS,
Acting Commissioner of Customs.

(T.D. 76-94)

Customs Delegation Order No. 34 (Revision 2)

Delegation of Authority to Waive Claims for Erroneous Payments of Pay and Allowances to Employees

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., March 25, 1976.

1. By virtue of the authority vested in me as Commissioner of Customs by Treasury Department Order No. 214 (Revision 2), dated August 19, 1974 (39 FR 30509), I hereby delegate to the Assistant Commissioner, Office of Administration, insofar as employees in the Headquarters, U.S. Customs Service, are concerned, and to Regional Commissioners of Customs, insofar as employees in their regions are concerned, the authority of the Secretary of the Treasury under 5 U.S.C. 5584, and the regulations of the Comptroller General in 4 CFR Parts 91-93, 37 FR 26095, December 8, 1972, to waive in whole or in part erroneous payments of pay and allowances, other than travel and transportation expenses and relocation expenses, to Treasury employees aggregating not more than $500 in conformity with the limitations and standards set forth in the aforesaid provision of law and regulations.

2. Customs Delegation Order No. 34 (Revision 1), dated July 18, 1973 (T.D. 73-202, 38 FR 19916) is hereby rescinded.

3. This order shall take effect upon publication in the ***Federal Register***.
(41 FR 13380, 3/30/76)

G.R. DICKERSON,
Acting Commissioner of Customs.

(T.D. 70-193)

Customs Delegation Order No. 37

Order of the Commissioner of Customs transferring the functions under Public Law No. 362—84th Congress—1st Session, to agents of the Customs Agency Service

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., September 1, 1970.

Under the authority conferred upon me by Treasury Department Order No. 165-5, dated October 17, 1956 (T.D. 54222, 21 F.R. 8242), the functions under Public Law No. 362—84th Congress—1st Session (Act of August 11, 1955, 21 U.S.C. 198a, 198b, 198c), are hereby transferred as follows:

1. All of the said functions are transferred to special agents in charge of the Bureau of Customs;

2. All of the said functions, except the authority to issue subpoenas, are transferred to senior resident special agents, resident special agents, and special agents of the Bureau of Customs.

This order supersedes Customs Delegation Order No. 10, dated October 19, 1956 (T.D. 54223, 21 F.R. 8242).
(35 FR 14223, 9/9/70)

MYLES J. AMBROSE,
Commissioner of Customs.

(T.D. 71-61)

Customs Delegation Order No. 40

Order of the Commissioner of Customs delegating functions, rights, privileges, powers, and duties to area directors in the Customs district of New York City, New York.

Department of the Treasury
Office of the Commissioner of Customs,
Washington, D.C., February 18, 1971.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), all functions, rights, privileges, powers, and duties delegated to district directors of customs and to regional commissioners of customs by Customs Delegation Order No. 22 (T.D. 56470, 30 F.R. 11180) are hereby delegated also to area directors of customs for the Customs district of New York City, New York, effective on April 1, 1971.

This order supersedes Customs Delegation Orders No. 23 (T.D. 66-100, 31 F.R. 7150) and No. 24 (T.D. 66-113, 31 F.R. 7842).
(36 FR 3830, 2/27/71)

MYLES J. AMBROSE,
Commissioner of Customs.

(T.D. 73-163)

Customs Delegation Order No. 46

Designation of the Assistant Commissioner, Office of Administration, Bureau of Customs, and the Director, Facilities Management Division, Office of Administration, Bureau of Customs, as contracting officers to enter into certain contracts

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., June 12, 1973.

1. By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), and by Treasury Department Order No. 208, (Revision 1), dated July 17, 1972 (37 F.R. 14419), I hereby designate the Assistant Commissioner, Office of Administration, Bureau of Customs, and the Director, Facilities Management Division, Office of Administration, Bureau of Customs, as contracting officers with authority to enter into and administer contracts for the acquisition of land and the construction of Customs border facilities provided for in § 1 and § 2 of the Act of June 26, 1930, as amended (19 U.S.C. 68, 69); the lease of real property; and the procurement of personal property and nonpersonal services (including construction).

2. This delegation is subject to the requirements and limitations of Treasury Department Order No. 208 (Revision 1), dated July 17, 1972, and shall be exercised in accordance with the requirements and limitations of Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. chapter 4) as well as the applicable Federal Procurement Regulations, 41 CFR, chapters 1 and 10.

3. Subject to the requirements and limitations of paragraph 2 above, the authority herein delegated may be redelegated by the Assistant Commissioner, Office of Administration, Bureau of Customs, or the Director, Facilities Management Division, Office of Administration, Bureau of Customs, to other officers or employees of the Customs Service in such manner as they shall direct.

4. Any action heretofore taken by the Assistant Commissioner, Office of Administration, Bureau of Customs, or the Director, Facilities Management Division, Office of Administration, Bureau of Customs, which involved the exercise of authority hereby granted is affirmed and ratified.

5. This order supersedes Customs Delegation Order No. 36, dated July 22, 1970 (T.D. 70-168, 35 F.R. 12079).
(38 FR 15857, 6/18/73)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 75-192)

Customs Delegation Order No. 46; AMENDMENT 1

Customs Delegation Order No. 46, relating to Designation of Contracting Officers, amended

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., July 23, 1975.

Customs Delegation Order No. 46 (T.D. 73-163, 38 F.R. 15857) designated the Assistant Commissioner, Office of Administration, U.S. Customs Service, and the Director, Facilities Management Division, Office of Administration, U.S. Customs Service, as contracting officers to enter into certain contracts.

In order to reflect the recent reorganization in the Office of Administration, Customs Delegation Order No. 46 is amended by substituting for Director, Facilities Management Division, Office of Administration, the new title, Director, Logistics Management Division, Office of Administration.
(40 FR 32361, 8/1/75)

G.R. DICKERSON,
Acting Commissioner of Customs.

(T.D. 73-302)

Customs Delegation Order No. 48

Order of the Commissioner of Customs delegating and revoking certain authority to field officers

Department of the Treasury,
Office of the Commission of Customs,
Washington, D.C., October 26, 1973.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), as amended:

(1) I hereby delegate to the following officers and such other officers as may be designated by them in writing the

authority to designate persons as indicated below as Customs officers (excepted) without additional compensation, in accordance with guidelines issued by Headquarters, U.S. Customs Service:

a. Regional Commissioners and District Directors of Customs may designate persons within their respective jurisdictions as Customs Inspectors (excepted), Customs Patrol Officers (excepted) or Customs Warehouse Officers (excepted) and may revoke designations;

b. The Directors, Inspection and Control Division and Patrol Division, Headquarters, Office of Operations, may designate persons as Customs Officers (excepted), Customs Inspectors (excepted), Customs Patrol Officers (excepted), or Customs Warehouse Officers (excepted), and may revoke designations; **[TD 74-78.]**

(2) Any action heretofore taken by the foregoing officers which involved the designation of persons as Customs Officers (excepted) without additional compensation is affirmed and ratified. Such designations shall remain valid for a period of 6 months from the date of this delegation order unless sooner revoked or reissued by any of the individuals delegated authority in paragraph one, above.

(3) The authority delegated to Special Agents In Charge by Customs Delegation Orders No. 42 (T.D. 71-181, 36 F.R. 13410) and 45 (T.D. 73-47, 38 F.R. 4000) is hereby revoked and those delegation orders are superseded. All designations made under those delegation orders shall continue in force for a period of 6 months from the date of this delegation order unless sooner revoked or reissued by any of the individuals delegated authority in paragraph one, above.

(38 FR 30455, 11/5/73)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 75-231)

Customs Delegation Order No. 50

Order of the Commissioner of Customs, delegating certain authority to the Deputy Commissioner of Customs and the Assistant Commissioners of Customs

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., September 12, 1975.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, I hereby delegate to each Assistant Commissioner of Customs the authority to prescribe instructions, and amendments thereto, which are published in the Customs Manual for the guidance of officers, agents, and employees of the Customs Service, and which pertain solely to those Customs Service functions for which he has direct responsibility. For those Customs Manual instructions, and amendments thereto, which pertain to functional areas which are not solely the responsibility of one Assistant Commissioner of Custom, I hereby delegate the authority to prescribe such instructions, and amendments thereto, to the Deputy Commissioner of Customs. These delegations of authority will become effective on the date of publication in the ***Federal Register***.

(40 FR 43235, 9/19/75)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 75-253)

Customs Delegation Order No. 51

Order of the Commissioner of Customs delegating authority with respect to the sale of Customs forms to the Assistant Commissioner, Office of Administration

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., October 6, 1975.

By virtue of the authority vested in me by Treasury Department Order No. 165, revised (T.D. 53654, 19 FR 7241), as amended, I hereby delegate to the Assistant Commissioner, Office of Administration, the authority to designate those Customs forms which shall be for sale to the general public, to establish the price of each salable Customs form, and to periodically adjust the price of such forms as the varying costs of printing and distribution require.

This Delegation Order shall take effect upon publication in the ***Federal Register***.

(40 FR 47806, 10/10/75)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 76-53)

Customs Delegation Order No. 54

Order of the Commissioner of Customs delegating authority, with respect to the withholding from compensation due Customs employees any amounts erroneously paid such employees, to the Regional Commissioners and the Assistant Commissioner, Office of Administration

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., February 19, 1976.

By virtue of the authority vested in me by 5 U.S.C. 5514, and by Treasury Department Circular No. 871, First Supplement, dated November 12, 1954, I hereby delegate to the Assistant Commissioner, Office of Administration, insofar as employees in the Customs Service headquarters are concerned, and to the Regional Commissioners of Customs, insofar as employees in their regions are concerned, the authority to withhold from compensation due Customs employees any amounts erroneously paid such employees. The deduction shall be in accordance with the provisions of 5 U.S.C. 5514 and Treasury Department Circular No. 871, First Supplement, dated November 12, 1954.

This order shall take effect upon publication in the ***Federal Register***.
(41 FR 8508, 2/27/76)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 79-137)

Customs Delegation Order No. 56

Order of the Commissioner of Customs delegating authority, with respect to functions under §§ 1061 and 1102 of the Currency and Foreign Transactions Reporting Act, to certain Customs officers.

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., May 7, 1979.

By virtue of the authority vested in me by Treasury Department Order No. 130-1, dated April 11, 1979 (T.D. 79-136), I hereby delegate to the following specified officers of the Customs Service, subject to guidelines and procedures which have been approved by the Assistant Secretary of the Treasury (Enforcement and Operations), the functions, rights, privileges, powers, and duties of the Secretary of the Treasury under §§ 1061 and 1102 of the "Currency and Foreign Transactions Reporting Act" (31 U.S.C. 1061, 1102):

1. The Assistant Commissioner (Investigations) is hereby delegated the authority to disseminate copies of reports required under the provisions of the Department of the Treasury regulations issued to implement 31 U.S.C. 1061.

2. District and area directors of Customs are hereby delegated the authority to act on petitions to remit or mitigate forfeitures of currency or other monetary instruments not in excess of $25,000 seized under 31 U.S.C. 1102.

3. Regional commissioners of Customs are hereby delegated the authority to act on supplemental petitions for relief from decisions of district and area directors of Customs in connection with the remission or mitigation of forfeitures of currency or other monetary instruments not in excess of $25,000 seized under 31 U.S.C. 1102.

4. The Director, Entry Procedures and Penalties Office of Regulations and Rulings, is hereby delegated the authority to act on petitions to remit or mitigate forfeitures of currency or other monetary instruments in excess of $25,000, but not in excess of $100,000, seized under 31 U.S.C. 1102.

5. The Deputy Assistant Commissioner (Regulations and Rulings) is hereby delegated the authority to act on supplemental petitions for relief from decisions of the Director, Entry Procedures and Penalties Division, in connection with the remission or mitigation of forfeitures of currency or other monetary instruments in excess of $25,000, but not in excess of $100,000, seized under 31 U.S.C. 1102.

R.E. CHASEN,
Commissioner of Customs.

(T.D. 79-199)

Customs Delegation Order No. 58

Order of the Commissioner of Customs delegating authority under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. to certain Customs officers.

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., July 17, 1979.

By virtue of the authority vested in me by Treasury Department Order No. 145, Revision 3 (32 F.R. 3066), I hereby delegate to the Regional Commissioner of Customs the authority to consider, ascertain, adjust, determine, deny, or settle and pay claims not in excess of $25,000 arising under 28 U.S.C. 2672 by reason of the negligent or wrongful act or omission of any employee of the Customs Service.

This order supersedes Customs Delegation Order No. 53 dated February 11, 1976 (T.D. 76-47, 41 F.R. 7551)

R.E. CHASEN,
Commissioner of Customs.

(T.D. 80-64)

Customs Delegation Order No. 59

Delegation of authority with respect to initial decisions under 5 U.S.C. 552 and 5 U.S.C. 552a

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., February 4, 1980.

Paragraph A.(b)(3) of Customs Delegation Order No. 1 (Revision 1), amended (T.D. 69-26, 34 F.R. 8208), delegates to the Director, Entry Procedures and Penalties Division, the authority to make decisions denying or approving requests for information under 5 U.S.C. 552 and requests for amendment of records under 5 U.S.C. 552a. To reflect a reassignment of functions and staff at Customs Service Headquarters, Paragraph A.(b)(3) of Customs Delegation Order No. 1 (Revision 1), amended, is hereby rescinded, Paragraph A.(b)(4) of that Order is redesignated Paragraph A.(b)(3), and the following delegation is made:

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241) as amended, the authority to approve or deny initial requests with respect to records in their custody under 5 U.S.C. 552 and 5 U.S.C. 552a is hereby delegated to the various division directors at Customs Service Headquarters, unless the request relates to records which are in the custody of an office which is not within a division. In that event, the authority to approve or deny the initial request is hereby delegated to the individual designated for that purpose by the Assistant Commissioner or Comptroller, as appropriate, having responsibility for the custodian officer.

The delegation of authority is effective (10 days from the date of publication of this notice in the ***Federal Register***).

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

(T.D. 80-239)

Customs Delegation Order No. 61

Order of the Commissioner of Customs delegating authority under the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et seq., to certain Customs officers.

Treasury Department,
Office of the Commissioner of Customs,
Washington, D.C., September 15, 1980.

By virtue of the authority vested in me by 31 CFR 5.2, I hereby delegate to the Regional Commissioners of Customs my authority pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et seq., to suspend or terminate collection actions on claims which do not exceed $20,000 exclusive of interest. The suspension or termination of collection actions pursuant to this delegation shall be made upon the recommendation of the Regional Counsel for any claim, in which the unpaid amount of the debt is more than $100, in conformity with 31 CFR 5.3, and shall be in accordance with regulations issued jointly by the Department of Justice and General Accounting Office (4 CFR 104.2, 104.3).

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

(T.D. 81-250)

Customs Delegation Order No. 63

Customs Establishes Order of Succession of Persons To Act as Commissioner of Customs

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955 (20 FR 2875), it is hereby ordered that the following officers of the U.S. Customs Service in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of Customs, or when there is a vacancy in such office:

1 The Deputy Commissioner of Customs.
2 The Assistant Commissioner (Border Operations).
3 The Assistant Commissioner (Commercial Operations).
4 Comptroller.
5 Assistant Commissioner (Management Integrity)

By virtue of authority vested in me by said Treasury Department Order No. 129 (Revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 53654; 19 FR 7241), there is hereby delegated to the Regional Commissioners of Customs, District Directors of Customs, and Port Directors of Customs, in the event of an enemy attack on the continental United States, authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers. This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

. This order supersedes Customs Delegation Order No. 60, dated January 6, 1981 (T.D. 81-8; 46 FR 2765).

Dated: September 15, 1981.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 82-142)

Customs Delegation Order No. 64

Order of the Commissioner of Customs Delegating Authority To Conduct On-site Inspections of Laboratories by Customs-approved Public Gaugers.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, I hereby delegate to the Director of the Technical Services Division the authority to conduct on-site inspections of commercial laboratories operated by Customs-approved public gaugers. The Director of the Technical Services Division may redelegate this authority to the Director of the Customs Field Laboratories.

This delegation of authority does not preclude a Customs district director from conducting additional checks, audits, or investigations to verify the gauging operations in his district. Dated: July 26, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 82-183)

Customs Delegation Order No. 65

Customs Establishes Order of Succession of Persons To Act as Commissioner of Customs

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955, (20 FR 2875), it is hereby ordered that the following officers of the U.S. Customs Service, in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of Customs, or when there is a vacancy in such office:

1. The Deputy Commissioner of Customs.
2. The Assistant Commissioner (Enforcement).
3. The Assistant Commissioner (Inspection and Control).
4. The Assistant Commissioner (Commercial Operations).
5. The Deputy Commissioner of Customs for International Affairs.
6. The Comptroller.
7. The Assistant Commissioner (Internal Affairs).

By virtue of authority vested in me by said Treasury Department Order No. 129 (Revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241) there is hereby delegated to the Regional Commissioners of Customs, District Directors of Customs, and Port Directors of Customs, in the event of an enemy attack on the continental U.S., authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers. This delegation of authority will remain in

effect until notice has been received from proper authority that it has been terminated.

This order supersedes Customs Delegation Order No. 63, dated September 15, 1981, (T.D. 81-250, 46 FR 46738). Dated: September 28, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 82-201)

Customs Delegation Order No. 66

Delegation of Authority To Prescribe Certain Customs Regulations

By virtue of authority vested in me by Treasury Department Order No. 165-25, dated August 5, 1982, (47 FR 37993), I hereby delegate to the Assistant Commissioner (Commercial Operations), with the right to redelegate, the authority to prescribe regulations relating to §§ 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93(b)(1) and (b)(2), 4.94(b), and 10.59(f). Dated: October 13, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 84-134)

Customs Delegation Order No. 67

Order of the Commissioner of Customs Delegating Authority for the Disposition of Certain Conveyance Seizure Cases

By virtue of the authority vested in me by Treasury Department Order No. 165-27, dated June 6, 1984, there is hereby delegated to the District Directors of Customs authority to dispose, in accordance with the instructions issued by the Assistant Commissioner (Commercial Operations) on June 7, 1984 (CO:R:R:M 617067 HDB), of conveyances valued at not more than $500,000 which are seized because they have been used in the illegal transportation of any quantity of heroin, five (5) pounds or more of cocaine, ten (10) pounds or more of hashish, two hundred fifty (250) pounds or more of any other controlled substance, or firearms in a quantity which is clearly in excess of what would be for personal use. Dated: June 25, 1984.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 84-170)

Customs Delegation Order No. 68

Delegation of Authority With Respect to the Examination of Records and the Issuances of Summonses

By virtue of the authority granted to me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, I delegate to the following specified officers of the Customs Service the functions, rights, privileges, powers and duties under § 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), to

(a) Examine, or cause to be examined, records, statements, declarations and documents; and

(b) Summon, upon reasonable notice, to appear before a Customs officer for the purpose of producing records and giving testimony, under oath,

(1) Any person who imported merchandise into the customs territory of the U.S. or caused it to be imported,

(2) Any officer, employee, or agent of such person,

(3) Any person who has possession, custody, or care of records relating to such importation, or

(4) Any other person deemed proper, in any investigation or inquiry conducted to determine the correctness of any entry, the liability of any person for duties and taxes which may be due the U.S., or liability for fines and penalties, or to ensure compliance with laws and regulations administered by the Customs Service:

Assistant Commissioner (Enforcement)
Deputy Assistant Commissioner (Enforcement)
Customs attaches
Senior Customs representatives
Special agents in charge
Area special agents in charge
Headquarters Director, Duty Assessment Division
Headquarters Director, Office of Investigations
Regional commissioners
Assistant regional commissioners of operations
Assistant regional commissioners (Enforcement)
Deputy assistant regional commissioners (Enforcement)
District and area directors
Assistant Commissioner (Internal Affairs)
Deputy Assistant Commissioner (Internal Affairs)
Headquarters Director, Internal Security Division, Office of Internal Affairs
Regional directors of internal affairs
Assistant regional directors for audit
Assistant regional directors for internal security

This order supersedes Customs Delegation Order No. 55, dated January 4, 1979 (T.D. 79-10, 44 FR 2217).

Dated: July 31, 1984.

WILLIAM VON RAAB,
Commissioner of Customs.

(T.D. 84-227)

Customs Delegation Order No. 69

Delegation of Authority for Small Claims Act

Dated: June 26, 1984.

The Small Claims Act, 31 U.S.C. 3723, authorizes the head of an agency to settle a claim for not more than $1,000 for damage to, or loss of, privately owned property that is caused by the negligence of an officer or an employee of the U.S. Government acting within the scope of his employment. Pursuant to 31 CFR 3.23 the authority to approve, disapprove or compromise such claims is vested in the head of the bureau or office or his designee. In order to expedite the handling of such claims, it is necessary to designate an official in the region where the act complained of occurred to decide such claims.

Accordingly, Regional Commissioners are delegated authority to:

Consider, ascertain, adjust, determine, deny, settle or pay claims of $1,000 or less arising under 31 U.S.C.

3723 by reason of the negligence of any officer or employee of the Customs Service acting within the scope of his employment. The Regional Commissioner of Customs may redelegate this authority for claims of $250 or less to a Customs officer not lower than the District (Area) Director.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

(T.D. 84-228)

Customs Delegation Order No. 70

Military Personnel and Civilian Employees Claims Act

June 26, 1984.

The Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 3721 **et seq.**, authorizes the Secretary of the Treasury to settle and pay claims of officers or employees of the Department, not to exceed $25,000 for damage to, or loss of personal property incident to their service, where possession of such property is determined to be reasonable, useful of proper under the circumstances. Pursuant to Treasury Department Order No. 177-22, Revision 2 (34 F.R. 156), the authority to settle and pay such claims has been delegated to the head of each bureau, office or service or his designee. In order to expedite the handling of such claims, it is necessary to designate an official within the region where the act complained of occurred to decide such claims.

Accordingly, Regional Commissioners are delegated authority to:

Settle, pay and deny claims not in excess of $25,000 arising under 31 U.S.C. 3721 **et seq.** made by an employee of the U.S. Customs Service for damage to, or loss of, personal property, incident to his service when there is no doubtful question of law or fact. This authority may not be redelegated.

Payment of claims pursuant to this delegation shall be in accordance with regulations issued by the Department of the Treasury (31 CFR Part 4).

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

(T.D. 84-229)

Customs Delegation Order No. 71

Delegation of Authority for Overflight of Sovereign Caribbean Airspace

Dated: September 6, 1984.

The Director, Air Operations (East) is delegated authority to:

Authorize overflight of sovereign Caribbean airspace and/or overflight of Sovereign Caribbean airspace with authority to land on foreign soil, with concurrent approval from the appropriate State Department Representative.

WILLIAM VON RAAB,
Commissioner of Customs.

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. 3, unless otherwise noted.

Source: 28 FR 14596, Dec. 31, 1963, unless otherwise noted.

Arrival and Entry of Vessels

§ 4.0 General definitions.

For the purposes of this part:

(a) The word "vessel" includes every description of water craft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. (19 U.S.C. 1401.) **[TD 69-266.]**

(b) The term "vessel of the U.S." means any vessel documented under the laws of the U.S.

(c) The term "documented" vessel means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard Office, the Certificate of Documentation may be endorsed for (1) registry (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise license (generally, entitles a vessel to employment in the coastwise trade, the fisheries, and other employments for which another endorsement is not required), (3) Great Lakes license (generally, entitles a vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employment for which another endorsement is not required), (4) fishery license (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the fishery conservation zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (5) pleasure license (entitles a vessel to pleasure use only). Generally, any vessel of at least 5 net tons and wholly owned by a U.S. citizen or citizens is eligible for documentation except that for a coastwise, Great Lakes, or fisheries license endorsement a vessel must also be built in the U.S. Detailed Coast Guard regulations on documentation are set forth in title 46, Code of Federal Regulations, § 67.01-67.45. **[TD 83-214.]**

(d) The term "noncontiguous territory of the U.S." includes all the island territories and possessions of the U.S., but does not include the Canal Zone.

(e) The word "citizen" is as defined by the U.S. Coast Guard for purposes of vessel documentation (see Subpart 67.03 of Title 46, Code of Federal Regulations.)

§ 4.1 Boarding of vessels; cutter and dock passes.

(a) When any vessel which might have on board any article subject to Customs treatment comes within the limits of any port of entry or within Customs waters, Customs officers may board the vessel to inspect its manifest and other documents and papers and to examine, inspect, and search the vessel and the persons and articles on board.[1] **[TD 53399.]**

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the U.S. shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving from another port in the U.S. with residue cargo, passengers, or baggage on board shall not be required unless preliminary entry is requested. **[TDs 47959, 53336, 54232.]**

(c)(1) No person, with or without the consent of the master, except a pilot in connection with the navigation of the vessel, personnel from another vessel in connection with the navigation of an unmanned barge, an officer of Customs or the Coast Guard, an immigration or health officer, an inspector of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, or an agent of the vessel or consular officer exclusively for purposes relating to Customs formalities, shall go on board any vessel arriving from outside the Customs territory of the U.S. without permission of the district director or the Customs officer in charge until the vessel has been taken charge by a Customs officer. **[TDs 22293, 50575, 51049, 51172, 78-141.]**

(2) A person may leave the vessel for the purpose of reporting its arrival as required by law (see § 4.2), but no other person, except those designated in paragraph (c)(1) of this section, shall leave any vessel arriving from outside the Customs territory of the U.S., with or without the consent of the master, without the permission of the district director of Customs or the Customs officer in charge until the vessel has been properly inspected by Customs and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel.[2]

(3) Every person permitted to go on board or to leave without the consent of a Customs officer under the provisions of this paragraph shall be subject to Customs and quarantine regulations.

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[1] "Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the U.S. or within the customs waters * * * and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance." (19 U.S.C. 1581(a))

"If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the U.S., he shall for every such offense be liable to a penalty of not more than $2,000 nor less than $500." (R.S. 3068, sec. 307, 49 Stat. 528)

[2] "It shall not be lawful for the master of any such steamship or other vessel,* not in distress, after the arrival of the vessel within any collection district of the U.S., to allow any person or persons, except a pilot, officer of the customs, or health officer, agents of the vessel and consuls, to come on board of the vessel, or to leave the vessel, until the vessel has been taken in charge by an officer of the customs, nor, after charge so taken, without leave of such officer, until all the passengers, with their baggage, have been duly landed from the vessel. * * *" (46 U.S.C. 158)

"The Secretary of the Treasury is authorized and directed to prescribe from time to time and enforce regulations governing the boarding of vessels arriving at the seaports of the U.S., before such vessels have been properly inspected and placed in security, and for that purpose to employ any of the officers of that department. Each person violating such regulations shall be subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both, in the discretion of the court. This section shall be construed as supplementary to § 158 and § 708 of this title." (46 U.S.C. 163 Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

"Whoever, not being in the U.S. service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined not more than $200 or imprisoned not more than six months, or both.

"The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him taken before any committing magistrate, to be dealt with according to law." (18 U.S.C. 2279)

"If, within twenty-four hours after the arrival of any vessel at any port in the U.S., any person, then being on board such vessel, solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such vessel any effects of any seaman, except under his personal direction, and with the permission of the master, he shall, for every such offense, be punishable by a fine of not more than $50, or by imprisonment for not more than three months. This section shall apply to vessels of the U.S. engaged in the foreign trade and to foreign vessels." (46 U.S.C. 709)

* A vessel from a noncontiguous foreign place carrying steerage passengers.

(4) The master of any vessel shall not authorize the boarding or leaving of his vessel by any person in violation of this paragraph.

(d) A district director, in his discretion may issue a cutter pass on Customs Form 3093 to permit the holder to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by an officer of the Customs, as follows: (1) To persons on official business; (2) to news reporters, newspaper photographers, photographers of established motion-picture companies, and broadcasters of established radio broadcasting companies; and (3) in cases of special exigency in which the district director is satisfied as to the urgent need for the boarding and that its allowance will not result in undue interference with the performance of official business. **[TDs 51575, 53816.]**

(e) No person in charge of a tugboat, rowboat, or other vessel shall bring such conveyance alongside an incoming vessel heretofore described and put on board thereof any person, except as authorized by law or regulations.

(f) Reserved **[TD 82–145.]**

(g) Term cutter and dock passes, for a period of not to exceed one year, may be issued in the discretion of the district director, to persons on official business and to duly accredited news reporters and newspaper photographers. Passes are not transferable and shall be forfeited upon presentation by others than those to whom issued. (Sec. 9, 22 Stat. 189, as amended, secs. 1–3, 31 Stat. 58, as amended; 46 U.S.C. 158, 163) **[TD 53816.]**

§ 4.2 Reports of arrival of vessels.

(a) The report of arrival required by section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), or as supplemented in local instruction issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the district director or to a Customs officer assigned to board a vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of a vessel, cargo, passengers, or crew. **[TDs 87–150, 88–71.]**

(b) For the purposes of this part, the time of arrival of a vessel shall be that time when she first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S. **[BMIN/BM 184, 1038.]**

(c) In the case of a vessel described in § 441(3), Tariff Act of 1930, as amended,[4] the report of articles subject to entry shall be made in accordance with the provisions of Subpart B of Part 148 of this chapter to the Customs officer assigned to board the vessel. (See § 4.1(c).) **[TDs 53606, 73–27.]**

(d) In the case of vessels described in § 441(4), Tariff Act of 1930, as amended,[4] the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival. **[TDs 6603, 53336.]**

(e) The report of baggage and merchandise on a vessel within the purview of § 441(2), Tariff Act of 1930, as amended,[4] shall be made as provided for in that section and shall be in addition to the required report of arrival. (Secs. 433, 441, 486, 46 Stat. 711, 712, as amended, 725, as amended; 19 U.S.C. 1433, 1441, 1486)

[4] See footnote 5 to § 4.3.

§ 4.2a Small vessel reporting of arrival, Miami District.

(a) *Scope.* This section imposes special requirements for the report of arrival from any foreign port or place by small vessels whose intended destination is at a point within the jurisdiction of the Miami, Florida, Customs District, as defined in § 101.3(b) of this chapter. The operators of vessels will be required to immediately report their arrival in the U.S., as prescribed by § 4.2(a) of this chapter, or as supplemented in local instruction issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation within the Miami District, and other appropriate means, by proceeding to locations designated by the District Director of Customs, Miami, Florida, prior to proceeding to their destination. The report will be made through a clearly marked Customs telephone. After securing some information from the person reporting, the Customs officer responding to the report of arrival will instruct the vessel operator that the vessel may proceed or that further action, which may include inspection at another location, is required.

(b) *Definitions.* For the purposes of this section:

(1) *"Foreign port or place"* includes a hovering vessel as defined in section 401(k), Tariff Act of 1930, as amended, 19 U.S.C. 1401(k), and any point in the Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(2) *"Small vessel"* includes any vessel of less than 5 net tons, and any private pleasure vessel, regardless of displacement.

(3) *"Arrival of a vessel"* occurs when a small vessel comes to rest within the waters of the Miami District, whether at anchor or at a dock, in any harbor or other location.

(c) *Vessels entering the southern and western portions of the Miami District.* The operators of vessels arriving from a foreign port of place with an intended destination at a point south of the entrance to Biscayne Bay known as Broad Creek, which is north of Key Largo between Swan Key and Broad Key, or that portion of the west coast of the State of Florida within the Miami Customs District as described in § 101.3(b), of this chapter, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location in the Florida Keys nearest to their intended destination point, before proceeding to their destination point.

(d) *Vessels entering the northern portion of the Miami District.* The operators of vessels arriving from a foreign port or place with an intended destination at or north of the entrance to Biscayne Bay known as Broad Creek, which is north of Key Largo and between Swan Key and Broad Key, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location nearest to point at which the Biscayne Bay may be first entered or the intracoastal waterway is first entered through a "cut", "channel", or "inlet", before proceeding to their destination point.

This provision shall apply to vessels whose intended destination is on the Florida mainland or the barrier islands east of the intracoastal waterway.

(e) *Penalties.*—(1) *Civil penalty.* The master or person in charge of any vessel who fails to report arrival as required under this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any vessel used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the master or person in charge who intentionally fails to report arrival as required by this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the vessel is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than sea stores, is imported or brought into the U.S. aboard a vessel which has failed to report arrival as prescribed by this section, the master or person in charge shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee. If any of the merchandise consists of a controlled substance listed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), the penalties prescribed in that section shall apply. **[TD 87-150, 88-71.]**

§ 4.3 Vessels required to enter.

(a) Except as specified in § 441, Tariff Act of 1930, as amended,[5] R.S. 2792,[7] R.S. 2793, as amended,[8] or as otherwise specified in this part,[8a] every American vessel arriving in the U.S. from a foreign port or place and every foreign vessel [9] arriving at a port in the U.S. from another such port or from a foreign port or place shall make entry [10] at the customhouse within 48 hours after arrival in accordance with § 4.9.[11] **[TDs 47192, 47843, 50780(4), 51912; 53538; 53606; BMIN/BMs 212, 339; 406, 1041, MCL 21, 1042, TD 83-214.]**

(b) For the purposes of this part the time of departure of a vessel shall be that time when she gets under way on her outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which she is going. (R.S. 2793, as amended, secs. 434, 435, 441, 46 Stat. 711, as amended, 712, as amended; 19 U.S.C. 288, 1434, 1435, 1441, 46 U.S.C. 111)

(c) For purposes of the vessel entry requirements in this section and § 4.9, a "foreign port or place" shall include a vessel on the high seas when the vessel arriving in the U.S. is returning from the vessel on the high seas after having—

(1) Transported export merchandise out of the U.S. to the vessel on the high seas and there transshipped the merchandise to that vessel; or

(2) Transported import merchandise to the U.S. from the vessel on the high seas after having there received the merchandise from that vessel. **[TD 85-91.]**

§ 4.4 Panama Canal; report of arrival required.

Vessels which merely transit the Panama Canal without transacting any business there shall be required to report their arrival because of such transit. The report of arrival shall be made in accordance with § 4.2(a) of this part. **[TDs 50620, 79-276, BMIN/BM 441 142.]**

§ 4.5 Government vessels.

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of the U.S. or any of its agencies, if such vessel (1) is manned wholly by members of the uniformed services of the U.S., by personnel in the civil service of the U.S., or by both, and (2) is transporting only property of the U.S. or passengers traveling on official business of the U.S., or it is ballast. However, if any cargo is on board, the master or commander of each such vessel arriving from abroad shall

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[5] "The following vessels shall not be required to make entry at the customhouse:

"(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade;

"(2) Passenger vessels making three trips or oftener a week between a port of the U.S. and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided,* That the master of any such vessel shall be required to report such baggage and merchandise to the collector within twenty-four hours after arrival;

"(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided,* That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further,* That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twnety-four hours after arrival. **[TD 85-123.]**

"(4) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided,* That the master, owner, or agent of such vessel shall report under oath to the collector the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

"(5) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers when towing vessels which are required by law to enter and clear. (Tariff Act of 1930, sec. 441, as amended. 19 U.S.C. 1441)

[7] "Vessels used exclusively as ferryboats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the U.S., be required to report such baggage and merchandise to the proper officer of the customs according to law." (46 U.S.C. 110)

"Any passenger vessel engaged triweekly or oftener in trade between ports of the U.S. and foreign ports shall be exempt from entrance and clearance fees while such service triweekly or oftener is maintained." (46 U.S.C. 112)

[8] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the U.S., departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided,* That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seaman to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[8a] No entry is required for a vessel of less than 5 net tons which arrives in the U.S. from a contiguous country otherwise than by sea. For the reporting requirements applicable with respect to such vessels, see § 5.1 of this chapter.

[9] Every undocumented vessel of 5 net tons or over owned by an alien, whether or not such alien is a resident of the U.S., is a foreign vessel.

[10] "Whenever, under any provision or provisions of any statute of the U.S., it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided,* That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U.S.C. 91a)

[11] See § 4.2(b).

[8] " " " Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by § 434 or § 435 of this Act, knowing the same to be forged, altered or false and without revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $50 or to imprisonment for not more than two years, or to both such fine and imprisonment." (Tariff Act of 1930, sec. 436, as amended; 19 U.S.C. 1436)

file a Cargo Declaration, Customs Form 1302, or an equivalent form issued by the Department of Defense, in duplicate. The original of each Cargo Declaration or equivalent form required under this paragraph shall be filed with the district director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier. See § 148.73 of this chapter with respect to baggage on carriers operated by the Department of Defense. **[TDs 47389, 53336, 54029, 73-27, 74-103, 83-213.]**

(b) The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting other property or passengers, and every vessel so owned or controlled but not so manned, whether in ballast or transporting cargo or passengers, shall be reported in accordance with § 4.2 and the vessel shall be entered in accordance with § 4.9.

(c) Every vessel owned by, or under the complete control and management of, any foreign nation shall be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned or controlled by the U.S. (Sec. 441(1), 46 Stat. 712; 19 U.S.C. 1441(1))

§ 4.6 Departure or unlading before report or entry.

(a) The provisions of § 585, Tariff Act of 1930, as amended,[13] apply to foreign as well as American vessels, but shall not be applied to a vessel merely passing through waters within the limits of a Customs district in the ordinary course of her voyage. **[TD 47843: The Appollon, 9 Wheat 362: the Javirena, 67 Fed 152.]**

(b) The "limits of any Customs district" as used herein are those defined by § 101.1(b) of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries. (Sec. 585, 46 Stat. 749, as amended; 19 U.S.C. 1585) **[Cunard S. S. Co. v. Mellon, 262, U.S. 100; TD 77-241.]**

§ 4.7 Inward foreign manifest; production on demand; contents and form.

(a) The master of every vessel arriving in the U.S. and required to make entry shall have on board his vessel a manifest, as required by § 431, Tariff Act of 1930 (19 U.S.C. 1431),[14] and by this section. The manifest shall be legible and complete. If it is in a foreign language, an English translation shall be furnished with the original and with any required copies. The manifest shall consist of a Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, a General Declaration, Customs Form 1301, and the following documents: (1) Cargo Declaration, Customs Form 1302, (2) Ship's Stores Declaration, Customs Form 1303, (3) Crew's Effects Declaration, Customs Form 1304, or, optionally, a copy of the Crew List, Customs and Immigration Form I-418, to which are attached crewmember's declarations on Customs Form 5129, (4) Crew List, Customs and Immigration Form I-418, and (5) Passenger List, Customs and Immigration Form I-418. Any document which is not required may be omitted from the manifest provided the word "None" is inserted in item 17-22 of the General Declaration, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend "No merchandise on board" shall be inserted in item 13 of the General Declaration. **[TDs 37374(Q.35), 37837, 50683, 52040, 52412, 53425, 55278, 56439, 71-169, 71-205, 74-284, 77-255.]**

(b) The original and one copy of the manifest shall be ready for production on demand.[15] The master shall deliver the original and one copy of the manifest to the boarding officer.[16] If the vessel is to proceed from the port of arrival to other U.S. ports with residue foreign cargo or passengers, an additional copy of the manifest shall be available for certification as a traveling manifest (see § 4.85). The district director may require an additional copy or additional copies of the manifest, but a reasonable time shall be allowed for the preparation of any copy which may be required in addition to the original and one copy. **[TDs 52965, 53336, 53448, 53792, 53848, 54413, 55278, 69-266, 71-169.]**

(c) No Passenger List or Crew List shall be required in the case of a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes or their connecting or tributary waters.[16a] **[TDs 51547, 51901, 54267, 54820, 71-169.]**

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[13] "If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this chapter, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the U.S." (Tariff Act of 1930, sec. 585, as amended, 19 U.S.C. 1585)

[14] "The master of every vessel arriving in the U.S. and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

[15] "The master of every vessel and the person in charge of every vehicle bound to a port or place in the U.S. shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge." (Tariff Act of 1930, sec. 583; 19 U.S.C. 1583)

[16] "Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500." (Tariff Act of 1930, sec. 439, as amended, 29 U.S.C. 1439)

[16a] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the U.S. on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

"First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the U.S. for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

"Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

"Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

"Fourth. The names of the persons of whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

"Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

Continued

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the U.S. with a registry, coastwise license, or Great Lakes license endorsement, or a vessel not so documented but intended to be employed in the foreign, coastwise, or Great Lakes trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see § 4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade—

at the port of first arrival from a foreign country shall declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairsincurred, outside the U.S., within the purview of § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466).[16b] If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on Customs Form 226.

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to § 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The district director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the district director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27-3. **[TD 83-214.]**

(3) The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the original manifest when formal entry of the vessel is made. (Secs. 439, 465, 581(a), 584, 46 Stat. 710, as amended, 712, as amended, 718, 747, as amended, 748, as amended, secs. 2, 3, 70 Stat. 544, as amended; 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583, 46 U.S.C. 883a, 883b) **[TD 83-214.]**

§ 4.7a Inward manifest; information required; alternative forms.

The forms designated by § 4.7(a) as comprising the inward manifest shall be completed as follows: **[TDs 71-169, 77-255.]**

(a) *Ship's Stores Declaration.* Articles to be retained aboard as sea or ship's stores, required by § 432, Tariff Act of 1930,[17] to be separately specified shall be listed on the Ship's Stores Declaration, Customs Form 1303. Less than whole packages of sea or ship's stores may be described as "sundry small and broken stores."

(b) *Crew's Effects Declaration. (Customs Form 1304).* (1) The declaration number of the Crew Member's Declaration, Customs Form 5129, prepared and signed by any officer or crewmember who intends to land articles in the U.S., or the word "None," shall be shown in item No. 7 on the Crew's Effects Declaration, Customs form 1304 opposite the respective crewmember's name. **[TD 77-255.]**

(2) In lieu of describing the articles on Customs Form 1304, the master may furnish a Crew List, Customs and Immigration Form I-418, endorsed as follows: **[TD 77-255.]**

> I certify that this list, with its supporting crewmembers' declarations, is a true and complete manifest of all articles on board the vessel acquired abroad by myself and the officers and crewmembers of this vessel, other than articles exclusively for use on the voyage or which have been duly cleared through Customs in the U.S.
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> _____
>
> (Master.)

The Crew List on Form I-418 shall show, opposite the crewmember's name, his shipping article number and, in column 5, the declaration number. If the crewmember has nothing to declare, the word "None" shall be placed opposite his name instead of a declaration number.

(3) For requirements concerning the preparation of Customs Form 5129, see Subpart G of Part 148 of this chapter. **[TDs 73-27, 77-255.]**

(4) Any articles which are required to be manifested and are not manifested shall be subject to forfeiture and the master shall be subjected to a penalty equal to the value thereof, as provided in § 584, Tariff Act of 1930, as amended. **[TD 73-27.]**

(c) *Cargo Declaration.* (1) The Cargo Declaration, Customs Form 1302, shall list all the inward foreign cargo on board regardless of the port of discharge. The block designated "Arrival" at the top of the form shall be checked. The cargo described in column Nos. 6 and 7, and either column No. 8 or 9, shall refer to the respective bills of lading. Either column No. 8 *or* column No. 9 shall be used, as appropriate. The name of the shipper shall be set forth in the column calling for such information and on the same line where the bill of lading is listed for that shipper's merchandise. When more than one bill of lading is listed for merchandise from the same shipper, ditto marks or the word "ditto" may be used to indicate the same shipper. The gross weight in column No. 8 shall be expressed in either pounds or kilograms. The measurement in column No. 9 shall be expressed according to the unit of measure specified in the Tariff Schedules of the United States (19 U.S.C. 1202). **[TDs 74-97, 77-255, 79-31, 85-123.]**

(2)(i) When inward foreign cargo is being shipped by container, each bill of lading shall be listed in the column headed "B/L Nr." in numerical sequence according to the bill of lading number. The number of the container which contains the cargo covered by that bill of lading and the number of the container seal shall be listed in column No. 6 opposite the bill of lading number. The number of any other bill of lading for cargo in that container also shall be listed in column No. 6 immediately under the container and seal numbers. A description of the cargo shall be set forth in

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"Sixth. An account of the sea stores and ship's stores on board of the vessel." (Tariff Act of 1930, sec. 431, 19 U.S.C. 1431)

"Any master of any vessel and any person in charge of any vehicle bound to the U.S. who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500. * * *: *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, * * *, said penalties shall not be incurred * * *" (Tariff Act of 1930, sec. 584, as amended; 19 U.S.C. 1584)

[16b] See § 4.14(a)(1).

[17] "The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, or if any such articles, whether shown on the manifest or not are landed without a permit therefor issued by the collector, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles." (Tariff Act of 1930, sec. 432, 19 U.S.C. 1432)

column No. 7 only if the covering bill of lading is listed in the column headed "B/L Nr." [TDs 77-255, 79-31.]

(ii) As an alternative to the procedure described in subparagraph (i), a separate list of the bills of lading covering each container on the vessel may be submitted on Customs form 1302 or on a separate sheet. If this procedure is used—

(A) Each container number shall be listed in alphanumeric sequence by port of discharge in column No. 6 of Customs form 1302, or on the separate sheet; and

(B) The number of each bill of lading covering cargo in a particular container, identifying the port of lading, shall be listed opposite the number of the container with that cargo in the column headed "B/L Nr." if Customs form 1302 is used, or either opposite or under the number of the container if a separate sheet is used. [TD 79-31.]

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be comprised of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to that carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric.

When alpha and numeric characters are used, the alpha characters must be grouped in the first or last positions of the identifier and not commingled with numeric characters. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance. [TD 88-69.]

(3) For shipment of containerized or palletized cargo, Customs officers shall accept a Cargo Declaration which indicates that it has been prepared on the basis of information furnished by the shipper. The use of words of qualification shall not limit the responsibility of a master to submit accurate Cargo Declarations or qualify the oath taken by the master as to the accuracy of his declaration.

(i) If Cargo Declaration covers only containerized or palletized cargo, the following statement may be placed on the declaration:

> The information appearing on the declaration relating to the quantity and description of the cargo is in each instance based on the shipper's load and count. I have no knowledge or information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(ii) If the Cargo Declaration covers conventional cargo and containerized or palletized cargo, or both, the use of the abbreviation "SLAC" for "shipper's load and count," or an appropriate abbreviation if similar words are used, is approved: *Provided,* That abbreviation is placed next to each containerized or palletized shipment on the declaration and the following statement is placed on the declaration:

> The information appearing on this declaration relating to the quantity and description of cargo preceded by the abbreviation "SLAC" is in each instance based on the shipper's load and count. I have no information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(iii) The statements specified in subparagraphs (3)(i) and (3)(ii) of this paragraph shall be placed on the last page of the Cargo Declaration. Words similar to "the shipper's load and count" may be substituted for those words in the statements. Vague expressions such as "said to contain" or "accepted as containing" are not acceptable. The use of an asterisk or other character instead of appropriate abbreviations, such as "SLAC", is not acceptable.

(d) *Crew List.* The Crew List shall be completed in accordance with the requirements of the Immigration and Naturalization Service, U.S. Department of Justice (8 CFR Part 251).

(e) *Passenger List.* (1) The Passenger List shall be completed in accordance with § 4.50 and with the requirements of the Immigration and Naturalization Service, U.S. Department of Justice (8 CFR Part 231), and the following certification shall be placed on its last page: [TD 73-27.]

> I certify that Customs baggage declaration requirements have been made known to incoming passengers; that any required Customs baggage declarations have been or will simultaneously herewith be filed as required by law and regulation with the proper Customs officer; and that the responsibilities devolving upon this vessel in connection therewith, if any, have been or will be discharged as required by law or regulation before the proper Customs officer. I further certify that there are no steerage passengers on board this vessel (46 U.S.C. 151–163).
>
> _____
>
> Master

(2) If the vessel is carrying steerage passengers, the reference to steerage passengers shall be deleted from the certification, and the master shall comply with the requirements of § 4.50.

(3) If there are no steerage passengers aboard upon arrival, the listing of the passengers may be in the form of a vessel "souvenir passenger list," or similar list, in which the names of the passengers are listed alphabetically and to which the certificate referred to in subparagraph (1) of this paragraph is attached.

(4) All baggage on board a vessel not accompanying a passenger and the marks or addresses thereof shall be listed on the last sheet of the passenger list under the caption "Unaccompanied baggage." (Sections 431, 432, 439, 453, 465, 497, 498, 584, 46 Stat. 710, as amended, 712, as amended, 716, 718, 728, as amended, 748, as amended, sec. 9, 22 Stat. 189, as amended, R.S. 4573; 19 U.S.C. 1431, 1432, 1439, 1453, 1465, 1497, 1498, 1584, 46 U.S.C. 158, 674) [TD 73-27.]

§ 4.8 Preliminary entry.

If it is desired that any vessel having on board inward foreign cargo, passengers, or baggage shall discharge or take on cargo, passengers, or baggage before the vessel has been formally entered, preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.[18] (Sections 448, 486, 46 Stat. 714, 725, as

[18] " * * the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse as provided by this Act. * * *" (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a)) amended; 19 U.S.C. 1448, 1486) [TDs 47813, 53336, 54232, 86-249, 71-189.]

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place (see § 4.3(c)) shall be in accordance with § 434, Tariff Act of 1930 (19 U.S.C. 1434).[19] The term "American vessel" means a vessel of the U.S. (see § 4.0(b)) as well as a vessel entitled to be documented (see § 4.0(c)) except for its size when arriving by sea (if less than 5 net tons and arriving otherwise than by sea, see Part 123 of this chapter). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with § 435, Tariff Act of 1930 (19 U.S.C. 1435).[20] The required oath on entry shall be executed on Customs Form 1300. **[TDs 50766, 72-169, 83-214, 85-91.]**

(b) Upon the entry of an American vessel, the master shall present to the District Director of Customs, in addition to the Crew Lists required under § 4.7(a), the certified copy of the Crew List on Customs and Immigration Form I–418 obtained, in accordance with the provisions of § 4.68(a), upon the last previous clearance outward from the U.S. The master shall deposit the vessel's document with the district director before or at the time of entry. The document may be returned upon request to the master of a vessel of less than 100 gross tons engaged in taking out fishing parties. **[TDs 51107, 54267, 55504, 71-169.]**

(c) The master of any foreign vessel shall exhibit the vessel's document to the district director on or before the entry of the vessel. After the net tonnage has been noted, the master may deliver it to the consul of the nation to which such vessel belongs, in which event he shall file with the district director the certificate required by § 435, Tariff Act of 1930 (19 U.S.C. 1435). If not delivered to the consul, the document shall be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document shall not be delivered to the master of the foreign vessel until clearance is granted under § 4.61.[21] **[TDs 71-169, 83-214.]**

(d) The master of every vessel required to make entry shall present on entry the pratique required by the pertinent regulations of the U.S. Public Health Service and shall pay all required fees and penalties incurred. **[TDs 51253, 71-169.]**

(e) The master, licensed deck officer, or purser may appear in person at the customhouse to enter the vessel; or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representatives of the master. (Secs. 434, 435, 46 Stat. 711, as amended, sec. 366, 58 Stat. 705, R.S. 4576, as amended; 19 U.S.C. 1434, 1435, 42 U.S.C. 269, 46 U.S.C. 677) **[TDs 53775, 54267, 71-169.]**

§ 4.10 Request for overtime services.

Request for overtime services in connection with the entry or clearance of a vessel, including the boarding of a vessel for the purpose of preliminary entry,[22] shall be made on Customs Form 3171. (See § 24.16 of this chapter regarding pleasure vessels.) Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless a term special license (unlimited or limited to the service requested) has been issued (see § 4.30(g)) and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. Such request shall not be approved (previously issued term special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of § 4.30 regarding terminal facilities and employee lists, respectively, and the required cash deposit or bond, on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, has been received. Separate bonds shall be required if overtime services are requested by different principals. (Secs. 448, 451, 46 Stat. 714, 715, as amended; 19 U.S.C. 1448, 1451) **[TDs 52442, 53461, 53626, 68-247, 72-189, 84-213.]**

§ 4.11 Sealing of stores.

Upon the arrival of a vessel from a foreign port, or a vessel engaged in the foreign trade from a domestic port, sea stores and ship's stores not required for immediate use or consumption on board while the vessel is in port and articles acquired abroad by officers and members of the crew, for which no permit to land has been issued, shall be placed under seal, unless the Customs officer is of the opinion that the circumstances do not require such action. Customs inspectors in charge of the vessel, from time to time, as in their judgment the necessity of the case requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew. (See § 4.39.) **[TDs 38218, 38248, 40852.]**

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[19] "* * * the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse as provided by this Act. * * *" (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a))

[20] "Except as otherwise provided by law, and under such regulations as the Secretary of the Treasury may prescribe, the master of a vessel of the U.S. arriving in the U.S. from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the collector the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with § 431 of this Act." (Tariff Act of 1930, sec. 434, as amended; 19 U.S.C. 1434)

[21] "The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the U.S., except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: *Provided*, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations." (Tariff Act of 1930, sec. 435; 19 U.S.C. 1435)

[22] Except as provided in § 441 of this Act (relating to vessels not required to enter), no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued by the collector: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act. After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. * * *." (Tariff Act of 1930, § 448(a); 19 U.S.C. 1448(a))

§ 4.12 Explanation of manifest discrepancy.

(a)(1) Vessel masters or agents shall notify the district director on Customs Form 5931 of shortages (merchandise manifested, but not found) or overages (merchandise found, but not manifested) of merchandise. **[TDs 51288, 52021, 52773, 53336, 53792, 55436, 71-22, 76-81.]**

(2) Shortages shall be reported to the district director by the master or agent of the vessel by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in § 158.3 of this chapter, or within 60 days after the date of entry of the vessel, whichever is later. Satisfactory evidence to support the claim of nonimportation [33] or of proper disposition or other corrective action (see § 4.34) shall be obtained by the master or agent and shall be retained in the carrier's file for one year. **[TDs 72-258, 76-81.]**

(3) Overages shall be reported to the district director within 60 days after the date of entry of the vessel by completion of a post entry [34] or suitable explanation of corrective action (see § 4.34) on the Customs Form 5931. **[TD 76-81.]**

(4) The district director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the master or agent. The master or agent shall satisfactorily resolve the matter within 30 days after the date of such notification, or within 60 days after entry of the vessel, whichever is later. **[TD 76-81.]**

(5)(a) Unless the required notification and explanation is made timely and the district director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the master or agent that there was a valid reason for failing to so report), applicable penalties under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. For the purpose of assessing applicable penalties, the value of the merchandise shall be determined as prescribed in § 162.43 of this chapter. The fact that the master or owner had no knowledge of a discrepancy shall not relieve him from the penalty. **[TDs 72-211, 75-299, 79-160.]**

(b) Except as provided in paragraph (c) of this section, a correction in the manifest shall not be required in the case of bulk merchandise if the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantity and description of the merchandise in such packages are correctly given. **[TDs 53336, 55436.]**

(c) Manifest discrepancies (shortages and overages) of petroleum and petroleum products imported in bulk shall be reported on Customs Form 5931, if the discrepancy exceeds one percent. (Secs. 440, 584, 46 Stat. 712 as amended, 748, as amended (19 U.S.C. 1440, 1584) **[TD 80-142, 45 FR 36383, May 30, 1980]**

§ 4.13 Alcoholic liquors on vessels of not over 500 net tons.[35]

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel, has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the boarding officer with the inward foreign manifest. Each such certificate shall consist of a declaration of the master of the vessel, together with the certificate of a consular officer of the U.S. or other authorized person, and shall cover only one shipment from one consignor to one consignee or firm of consignees. The document shall be in substantially the following form: **[TDs 47886, 48711, 49258, 49658, 53336, 67-201.]**

Declaration of Master and Certificate Covering Shipment of Spirits, Wines, or Other Alcoholic Liquors on a Vessel of 500 Net Tons or Less (19 U.S.C. 1707)

Declaration of Master. I declare that the following merchandise is being shipped in accordance with the facts here stated as true and correct to the best of my information and belief:

Date of shipment: _____

Marks, numbers, and quantities: _____

Port of arrival: _____

Consignor: _____

Full description of goods: _____

Consignee: _____

_____

(Signature)

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[33] * * * "If any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided,* That if the appropriate Customs officer shall be satisfied that the manifest * * * is incorrectly by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *, the term 'clerical error' means a non-negligent, inadvertent, or typographical mistake in the preparation, assembly or submission of the manifest. * * *" (Tariff Act of 1930, sec. 584, as amended, 19 U.S.C. 1584). **[TDs 79-160, 80-142.]**

[34] "If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500." (Tariff Act of 1930, sec. 440, as amended; 19 U.S.C. 1440). **[TD 80-142.]**

[35] "In addition to any other requirement of law, every vessel, not exceeding five hundred net tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the U.S. of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the U.S., said certificate to be issued by a consular officer of the U.S. or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the U.S., or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the U.S., shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required in double the amount of the duties to which such merchandise would be subject if imported into the U.S., conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the U.S. or otherwise as provided in said regulations: *Provided,* That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. * * *." (19 U.S.C. 1707)

Master of the _____
(Name of vessel)

_____
(Port of shipment)

_____ 19____
(Date)

(Use whichever alternative applies:)

Certificate of Consular Officer. I certify that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have delivered one copy hereof to him, and that I have retained a copy in my files.

Service number not required. _____
(Post)

Tariff item No. 58(a) (no fee). _____
(Date)

[consular impression seal]

_____
(Signature)

_____
(Title)

Certificate of Other Authorized Person. I certify that I have been designated by letter of _____, 19____, from (insert name of Officer), American (title) at (place), to provide certifications upon declarations made by masters under § 7 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1707), that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have no interest in the shipment described, that I have delivered one copy hereof to the person making the declaration, and that I have forwarded one copy to the American (Embassy, Consulate General, Consulate) at (place).

_____
(Port of shipment)

_____ 19____
(Date)

[seal not required]

_____
(Signature)

_____
(Title)

The provisions of this paragraph, read together with those of § 91.4, Title 22, Code of Federal Regulations, constitute the joint regulations contemplated for issuance by the Secretary of State and the Secretary of the Treasury under § 1707, Title 19, United States Code.

(b) When any shipment of spirits, wines, or other alcoholic liquors found on board a vessel not exceeding 500 net tons is not accompanied by a certified declaration as described in paragraph (a) of this section but is shown to have a bona fide destination outside the U.S., the master shall furnish a landing bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in § 113.64 of this chapter in an amount equal to twice the potential duty liability with an authorized corporate surety. **[TDs 49258, 67-201, 84-213.]**

(c) The condition of the landing bond shall be satisfied by the delivery to the district director within 6 months from the date of the bond of a landing certificate or certificates of a revenue officer of the country of destination showing that all the alcoholic liquors have been landed at their foreign destination.

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

(a) *Dutiability of foreign repairs and equipment purchases.* (1) *Items subject to duty.* The equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for repairs made, including the cost of labor incurred, outside the U.S., upon any vessel documented under the laws of the U.S. with a registry, coastwise trade license, or Great Lakes license endorsement, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad valorem on the actual cost in the country where the items are purchased or the repairs are made. Duty attaches at the time the repairs or purchases are made. Liability for declaration, entry, and payment of duties accrues at the time of the first arrival of the vessel in a port of the U.S. For the purposes of this section, equipment, repair parts or materials purchased, or repairs made, in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are not considered to have been purchased or made outside the U.S. **[TD 83-214.]**

(2) *Dutiable costs on specific types of vessels*—(i) *Fishing vessels.* Documented vessels of the U.S. with a fishery license endorsement having a permit to touch and trade (see § 4.15) and documented vessels with a fishery license endorsement which lack a permit to touch and trade are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the U.S. Government, if documented with a registry, coastwise trade or Great Lakes trade endorsement, or if undocumented, intended to engage in foreign, coastwise or Great Lakes trade, are subject to this section. See paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels.

(iii) *Vessels outside U.S. for two years or more.*

(A) *Requirements for declaration and entry of dutiable items.* If a vessel which is documented with a registry, coastwise trade, or Great Lakes trade endorsement is operated in international or foreign waters two years or more after its last departure from the U.S., the only dutiable items are fish nets and nettings whenever purchased and any other items purchased or repairs made during the first six months after the vessel's last departure from the U.S. Under these circumstances, only those items (with the exception of fish nets and nettings) purchased and repairs made outside the U.S. during the first six months after the vessel's last departure from the U.S. shall be declared and entered. Fish nets and netting purchased or repaired outside the U.S. shall be declared and entered whether or not purchased or repaired during the first six months after departure.

(B) *Exception.* The provisions of § 4.14(a)2(iii)(A) do not apply to a vessel designed and used primarily for transporting passengers and property if such vessel departed the U.S. for the sole purpose of obtaining equipment, parts, materials, or repairs. **[TD 85-123.]**

(iv) *LASH Barges.* Lighter-abroad-ship (LASH) barges (see §§ 4.81 and 4.81a) and similar vessels documented with a registry, coastwise trade, or Great Lakes trade endorsement or, if undocumented, intended to engage in such trade, are subject to this section. **[TD 83-214.]**

(b) *Declaration and repair entry.* (1) *Declaration.* Upon first arrival of the vessel in the U.S., the owner or master

shall declare on Customs Form 226 all equipment, parts, or materials purchased, and all repairs made, outside the U.S. Except as provided in § 4.14(a)(2)(iii) (B), the declaration is required regardless of the dutiable status of such items or expenses. The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the original manifest when formal entry of the vessel is made. Estimated duties shall be deposited or a bond on Custom Form 301, containing the bond condition set forth in § 113.64 of this chapter shall be filed before the departure of the vessel, except as provided in subparagraph (2)(i) of this paragraph. The amount of the bond shall be determined by the district director as provided in § 113.14(m) of this chapter. See paragraph (g) of this section for applicable penalties. **[TD 84-213.]**

(2) *Entry.* All equipment, parts, or materials purchased for, and all repairs made outside the U.S. to, any vessel subject to the provisions of this section shall be entered on Customs Form 226 by the master or owner of the vessel. The entry shall be filed with the appropriate Customs officer at the port of first arrival within five working days after arrival. The Customs officer with whom the entry is filed shall forward it to the appropriate vessel repair liquidation unit. The party filing the entry shall mark it to indicate whether it is a full and complete account or an incomplete account. See paragraph (g) of this section for applicable penalties.

(i) *Entry procedures for vessels owned or chartered by the U.S.* Whenever the appropriate Customs officer determines that a Government-owned or chartered vessel subject to the provisions of this section (see paragraph (a)(2)(ii)) is being operated by an agency of the U.S., or that a Government-owned or chartered vessel is being operated by a private party for an agency of the U.S. under an agreement that obligates the Government agency to pay any duty on the costs of repairs or purchases, the vessel shall be allowed to depart the port of first arrival without depositing estimated duties or furnishing a bond to cover estimated duties. In all other cases, the vessel shall be treated as though privately owned.

(ii) *Time period for submitting evidence of cost.* Whenever a repair entry is submitted as a full and complete account, the entry papers shall include evidence showing the cost of each item listed on the entry. If a repair entry is submitted as an incomplete account, the evidence must be submitted within 60 days from the date of the vessel's arrival. If before the end of the 60-day period, the party that is required to furnish the evidence of cost submits a written request for an extension of time beyond the 60-day period, together with a satisfactory explanation of the delay, to the appropriate vessel repair liquidation unit, that unit may grant an additional 30-day extension of time to submit cost evidence. Any request for a further extension of time to furnish evidence of cost shall be submitted to the appropriate vessel repair liquidation unit, which shall transmit the request to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for approval. If the costs shown on the complete account differ from the costs declared on the entry, the appropriate Customs officer may permit amendment of the entry.

(A) *Investigation to obtain evidence.* If the required evidence is not furnished timely, or is of doubtful authenticity, the appropriate regional commissioner shall use all available means to obtain the necessary information and may refer the matter to the Office of Investigations. If an investigation is conducted, the Office of Investigations shall obtain all available evidence on the cost of the repairs and any evidence with respect to the reason for the party's failure to submit the evidence in a timely fashion.

(B) *Concurrent time period for submission of costs and filing application for relief.* The 60-day time period to submit evidence of cost on the entry is concurrent with the 60-day time period to submit an application for relief under paragraph (d)(1)(ii) of this section and will not operate to provide additional time to submit an application for relief. A request for additional time to submit evidence of cost may include a request for additional time to submit an application for relief.

(c) *Remission or refund of duty—* (1) *Vessel repair liquidation units.* Vessel repair liquidation units under the supervision of the Regional Commissioner of Customs are established at New York, New York (New York Region); New Orleans, Louisiana (South Central Region); and San Francisco, California (Pacific Region). The New York Region unit shall process and liquidate each vessel repair entry filed at ports in the Northeast, New York, and the North Central Regions. The South Central Region unit shall process and liquidate each vessel repair entry filed at ports in the Southeast, the South Central, and the Southwest Regions. The Pacific Region unit shall process and liquidate each vessel repair entry filed at ports in the Pacific Region. After processing and liquidation of the entries, the bulletin notice of liquidation shall be returned to the respective ports of entry for posting. **[TD 84-149.]**

(2) *Authority.* If clearly applicable precedent for a decision exists and any remission or refund of duty as a result of a decision will be less than $2,500, the Regional Commissioners of New York, South Central, and Pacific Regions may approve or deny any application for relief on vessel repair entries filed at the ports within their respective jurisdictions. If there is no clearly applicable precedent on which to base a decision, or if the decision may result in a remission or refund of $2,500 or more in duty, the respective Regional Commissioner shall refer the matter to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice before acting on the application for relief. **[TD 84-149.]**

(3) *Basis for remission or refund.* Remission or refund of duty is authorized if good and sufficient evidence is furnished which shows any of the following circumstances exist:

(i) *Stress of weather or other casualty.* The vessel, while in the regular course of its voyage, was compelled, by stress of weather or other casualty, while outside the U.S., to purchase such equipment or make such repairs, to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination in the U.S. However, only the duty on the cost of the minimal repairs needed for the safety and seaworthiness of the vessel is subject to remission or refund. For the purposes of this section, the term "casualty" does not include any purchases or repairs necessitated by ordinary wear and tear, but does include a part's failure to function if satisfactory evidence shows that the specific part was repaired or serviced immediately before starting the voyage from the U.S. port and that the part failed to function within six months of such repair or servicing.

(ii) *U.S. parts and equipment installed with American labor.* The equipment, equipment parts, repair parts or materials used on the vessel were manufactured or produced in the U.S. and purchased by the owner of the vessel in the U.S., and the labor necessary to install such equipment or to make such repairs was performed by residents of the U.S. or by members of the regular crew of the vessel.

(iii) *Dunnage.* The equipment, equipment parts, materials or labor were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo.

(d) *Procedure for remission or refund of duties.* (1) *Application for relief.* (i) *Form and contents.* The application for relief need not be in any particular form. The application for relief should allege that an item or a repair expense covered by the entry is not subject to duty under paragraph (a) of this section, or that the articles purchased or the repair expenses are within the provisions of paragraph (c) of this section, or that both conditions are present. The application for relief also shall certify that all foreign equipment, parts or materials purchased for, and all foreign repairs made to, the vessel within one year immediately preceding the application have been declared as required by this section, or the application shall be deemed incomplete. The application for relief shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the application for relief is filed by a corporation it shall be signed by an authorized corporate officer.

(ii) *Place and time of filing.* The application for relief shall be filed with the appropriate Customs officer at the port where the vessel repair entry was made or with the appropriate vessel repair liquidation unit (see paragraph (c)(1) of this section). If filed at the port where the entry was made, the Customs officer who receives the application shall promptly forward it, together with his comments, if any, to the appropriate vessel repair liquidation unit. The application for relief, with supporting evidence, shall be filed within 60 days from the date of first arrival of the vessel. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one 30-day extension of time to file beyond the 60-day filing period.

(iii) *Supporting evidence.* Unless such evidence is already filed with Customs, each application for relief shall include duplicate copies of the following evidence, in addition to any other documents the applicant wishes to submit in support of the application:

(A) All itemized bills, receipts, and invoices covering items specified in paragraph (a)(1) of this section, segregating the cost of those items for which relief is sought from all other items listed in the vessel repair entry.

(B) Full and complete photocopies of the relevant parts of the vessel's logs.

(C) Photocopies of any American Bureau of Shipping or other classification society report of the cause and type of damage and the nature of the remedial action taken, together with photocopies of any certifications of seaworthiness.

(D) A certification by the master or other responsible vessel officer with personal knowledge of the facts relating to the relief sought, including, but not limited to, details of the claimed stress of weather or other casualty, when and where it occurred, the damages due to such stress of weather or other casualty, and the place and date where the vessel was repaired or the equipment for the vessel was purchased.

(E) A certification by the master as to whether the repairs or equipment purchases were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the U.S.

(F) A written description of the circumstances involved by the master or other responsible vessel officer having knowledge of the facts when remission or refund is sought under the provisions of paragraph (c)(3)(ii) (relating to the use of American equipment and labor) or (c)(3)(iii) (relating to dunnage) of this section.

(G) In the case of LASH barges and similar unmanned vessels, the evidence required in paragraphs (d)(1)(iii)(B), (D), (E), and (F) of this section may be omitted, and in lieu thereof, the owner or operator of each vessel shall submit evidence showing that: (*1*) the vessel was inspected immediately prior to its lading aboard the vessel which transported it to a foreign port on the voyage in which the damage occurred, (*2*) the vessel was then found to be in seaworthy condition, (*3*) the damage was discovered during the course of the foreign voyage, and (*4*) the repairs were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the U.S. **[T.D. 82-227.]**

(iv) *Documentary evidence.* All documents submitted in support of an application must be certified by the master or owner of the vessel to be originals or copies of originals. If a vessel is owned or operated by a corporation, the master or an authorized corporate officer shall certify the documents. Documents in a foreign language shall be accompanied by an English translation that is certified for accuracy by the translator.

(v) *Action.* Within 60 days after receipt of an application for relief by a vessel repair liquidation unit, the appropriate regional commissioner shall either approve or deny the application for relief or forward it to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice, as provided in paragraph (c)(2) of this section. The appropriate regional commissioner shall give prompt written notice of any final decision to the party who submitted the application. The notice shall advise the party of its right to petition for review of the decision under paragraph (d)(2) of this section. If the decision involves remission of duty under paragraph (c) of this section and the entry has been liquidated, reliquidation is not required. If any other relief is granted and the entry has been liquidated, reliquidation is required.

(vi) *Suspension of liquidation.* If an application for relief has been filed within the time period provided in paragraph (d)(1)(ii) of this section, liquidation of the vessel repair entry shall be suspended until 30 days after the date of the written notice provided for in paragraph (d)(1)(v) of this section.

(2) *Petition for review on a denial of an application for relief.*

(i) *Form.* If an applicant is dissatisfied with the decision on its application for relief, the applicant may file a petition for review of that decision. The petition for review need not be in any particular form. The petition for review must identify the decision on the application for relief and must detail the exceptions taken to that decision. The petition shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the petition for review is filed by a

corporation, it must be signed by a duly authorized corporate officer.

(ii) *Place and time of filing.* The petition for review shall be addressed to the Commissioner of Customs and shall be filed with the appropriate vessel repair liquidation unit within 30 days after the date of the written notice to the party of the decision on the application for relief, as provided in paragraph (d)(1)(v) of this section. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one additional 30-day extension of time.

(iii) *Action.* The appropriate regional commissioner promptly shall transmit a copy of the petition for review, any comments and recommendations he may have on the petition for review, and the entire file on the application for relief to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for decision. After notification of the decision by Headquarters, the appropriate regional commissioner shall give written notification of that decision to the party who filed the petition for review. The notice will inform the party of his right to submit a supplemental petition for review and that no further suspension of liquidation will be permitted.

(iv) *Suspension of liquidation.* If an original petition for review is filed within the time provided for in paragraph (d)(2)(ii) of this section, liquidation of the vessel repair entry shall be suspended further until the regional commissioner notifies the party who filed the petition of the decision on the petition. Following notification of the Headquarters decision to the party who filed the petition, the vessel repair liquidation unit shall promptly initiate liquidation of the entry in accordance with that decision even if a supplemental petition for review is filed.

(e) *Liquidation of vessel repair entries, time limits.* If evidence of cost is available and the appropriate vessel repair liquidation unit receives written notification from the master, owner, or operator of the vessel, or their authorized agent, that an application for relief will not be filed, the vessel repair liquidation unit promptly shall initiate liquidation of the entry. In all other cases in which the evidence of cost is available, the entry may be liquidated 60 days after arrival of the vessel, or at the expiration of any extension of time granted under paragraph (b)(2)(ii) of this section to furnish evidence of cost, unless an application for relief is filed timely as provided in paragraph (d)(1)(ii) of this section. If an application for relief is filed timely, the vessel repair entry may be liquidated 30 days after the date of the written notice to the party who filed the application for relief, as provided in paragraph (d)(1)(v), unless a petition for review is filed timely under paragraph (d)(2)(ii) of this section. If a petition for review is filed timely, the vessel repair entry may be liquidated after the date of the notification of the decision on the petition to the party who filed the petition even though a supplemental petition for review is filed.

(f) *Protests.* Following liquidation of an entry, a protest under Part 174 of this chapter may be filed against the decision to treat an item or a repair as dutiable under paragraph (a) of this section.

(g) *Penalties.* (1) *Failure to report, enter, or pay duty.* If the owner or master of a vessel subject to the provisions of paragraph (a) of this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required, or if he makes any false statement in respect of the purchases or repairs described in this section without reasonable cause to believe the truth of the statements, or aids or procures the making of any false statement as to any material matter without reasonable cause to believe the truth of the statement, the vessel, with its tackle, apparel, and furniture, or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, to be recovered from the owner, shall be subject to seizure and forfeiture.

(2) *False declaration.* If any person required to file a declaration on Customs Form 226, by paragraph (b)(1) of this section, or to file an entry on Customs Form 226, by paragraph (b)(2) of this section, willfully and knowingly provides any false information, or willfully and knowingly omits any required information, that person shall be subject to the criminal penalties provided for in 18 U.S.C. 1001. **[TD 80-237.]**

§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade.

When a fishing vessel departs from the U.S. and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.[39] Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to § 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty. **[TDs 42018, 77-28, 83-214.]**

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port. **[TD 83-214.]**

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the U.S., whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the district director.

(d) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement. (R.S. 4364, 4365; 46 U.S.C. 310, 311) **[TD 83-214.]**

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[39] "Whenever any vessel, licensed for carrying on the fisheries, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the U.S. arriving from a foreign port." (46 U.S.C. 310)

"Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of $500, without having such permission as is directed by § 310 of this title, such vessel together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture." (46 U.S.C. 311; see also 46 U.S.C. 325)

If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies. (R.S. 251, as amended, R.S. 4364, secs. 466, 624, 46 Stat. 718, as amended, 759 (19 U.S.C. 66, 1466, 1624, 46 U.S.C. 310))

§ 4.16 Entry and clearance on board vessels.

(a) A master, owner, or agent of a vessel described in the Act of June 16, 1937,[29] who desires that arrival may be reported, entry made, and clearance obtained on board the vessel shall file with the district director of Customs an application on Customs Form 3171 and a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as the district director deems appropriate but not less than $1,000. **[TDs 49117, 51273, 68-247, 84-213.]**

(b) If the application is approved, the District Director or such Customs officer as may be designated by him shall receive the report of arrival and the entry of the vessel and grant it clearance on board the vessel.

(c) For the purposes of the said act the term "at night" shall include the hours from 5 p.m. of one day to 8 a.m. of the following day, and the term "holiday" shall include only national holidays. (50 Stat. 303; 19 U.S.C. 1435b)

§ 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 159.42 of this chapter.) **[TDs 39057, 53336, 73-175.]**

Tonnage Tax and Light Money

§ 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty[36] of 2 cents per net ton, not to exceed in the aggregate 10 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the U.S. from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, Newfoundland, the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations and regular tonnage tax of 6 cents per net ton, not to exceed 30 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the U.S. from any other foreign port. In determining the port of origin of a voyage to the U.S. and the rate of tonnage tax, the following shall be used as a guide: **[TDs 37618, 53336, 54364, 54819; BNGL 270, 4/7/25; 318, 10/12/32. BMIN/BM 373, 5/27/41. MCL 18, 9/11/42, 85-91.]**

(1) When the vessel has proceeded in ballast from a port to which the 6-cent rate is applicable to a port to which the 2-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the U.S. shall be assessed at the 2-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 6-cent port to a 2-cent port when all such cargo or passengers have been unladen or discharged at the 2-cent port, without regard to whether the vessel thereafter has proceeded to the U.S. in ballast or with cargo or passengers laden or taken on board at the 2-cent port.

(3) The 6-cent rate shall be applied when the vessel proceeds from a 2-cent port to a 6-cent port en route to the U.S. under circumstances similar to subparagraph (1) or (2) of this paragraph.

(4) If the vessel arrives in the U.S. with cargo or passengers taken at two or more ports to which different rates are applicable, tonnage tax shall be collected at the higher rate.

(b) The tonnage year shall be computed from the date of the first entry of the vessel concerned, without regard to the rate of the payment made at that entry, and shall expire on the day preceding the corresponding date of the following year.[37] **[TDs 6082, 51073.]**

(c) A vessel shall also be subject on every entry from a foreign port or place, whether or not regular tonnage tax is payable on the particular entry, to the payment of a special tonnage tax[38] and to the payment of light money[39] at the rates and under the circumstances specified in the following table: **[BN Gen. Ltr. 142, 5/5/17; TDs 22547, 53399, 75-110, 76-280, 82-145.]**

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[29] "In order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the U.S. at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the collector of customs, or any deputy collector of customs designated by him, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed by the Secretary of Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided*, That bond, as prescribed in § 1451 of this title, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday." (19 U.S.C. 1435b. Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

[36] Upon vessels which shall be entered in the U.S. from any foreign port or place there shall be paid duties as follows: On vessels built within the U.S. but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the U.S., at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the U.S. shall pay a tax of fifty cents per ton.

"A tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, is imposed at each entry on all vessels which shall be entered in any port of the U.S. from any foreign port or place in North America, Central America, the West Indies Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and a duty of 6 cents per ton, not to exceed 30 cents per ton per annum, is imposed at each entry on all vessels which shall be entered in any port of the U.S. from any other foreign port, not, however, to include vessels in distress or not engaged in trade.

"Upon every vessel not of the U.S., which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: *Provided*, That no such duty shall be required where a vessel owned by citizens of the U.S., but not a vessel of the U.S., after entering an American port, shall, before leaving the same, be registered as a vessel of the U.S. On all foreign vessels which shall be entered in the U.S. from any foreign port or place, to and with which vessels of the U.S. are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of $2 per ton; and none of the duties on tonnage above-mentioned shall be levied on the vessels of any foreign nation if the President of the U.S. shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the U.S., have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the U.S. relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the U.S. shall pay a tax of 50 cents per ton." (46 U.S.C. 121)

[37] There may be five payments at the maximum (6-cent) and five at the minimum (2-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to 40 cents per net ton for the tonnage year of a vessel engaged in alternating trade.

[38] See footnote 36.

[39] "A duty of 50 cents per ton, to be denominated 'light money', shall be levied and collected on all vessels not of the U.S. which may enter the ports of the U.S. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties: *Provided*, That no such duty shall be required where a vessel owned by citizens of the U.S., but not a vessel of the U.S., after entering an American port, shall, before leaving the same, be registered as a vessel of the U.S." (46 U.S.C. 128)

Classes of vessels	Rate per net ton		
	Regular tax	Special tax	Light money
Vessels of the U.S.:			
1. Under provisional register, without regard to citizenship of officers	$0.02 or $0.06		
2. All others:			
(i) If all the officers are citizens	.02 or .06		
(ii) If any officer is not a citizen	.02 or .06	[1] $0.50	[1] $0.50
Undocumented vessels which are owned by citizens [2]	.02 or .06	.50	[3].50
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money	.02 or .06		
2. Entering from a foreign port of place where vessels of the U.S. are not ordinarily permitted to enter and trade [3a]	.02 or .06	[4] 2.00	[4].50
3. All others:			
(i) Built in the U.S.	.02 or .06	.30	.50
(ii) Not built in the U.S.	.02 or .06	.50	.50

[1] This does not apply on the first arrival of a vessel in a port of the U.S. from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.

[2] This special tax and light money do not apply if the vessel is documented as a vessel of the U.S. before leaving the port.

[3] This does not apply if the vessel is under a certificate of protection and the owner or master files with the collector the oath required by 46 U.S.C. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U.S.C. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.

[3a] The following countries ordinarily do not permit vessels of the United States to enter and trade: Democratic Kampuchea (Cambodia); Democratic People's Republic of Korea (North Korea); and the Socialist Republic of Vietnam.

[4] This is to be collected on each entry of a vessel from such a port or place.

(d) Tonnage tax shall be imposed upon a vessel even though she enters a port of the U.S. only for orders. **[TD 49523.]**

(e) The fact that a vessel passes through the Panama Canal does not affect the rate of tonnage tax otherwise applicable to the vessel. **[TD 79–276.]**

(f) For the purpose of computing tonnage tax, the net tonnage of a vessel stated in the vessel's marine document shall be accepted unless (1) such statement is manifestly wrong, in which case the net tonnage shall be estimated, pending admeasurement of the vessel, or the tonnage reported for her by any recognized classification society may be accepted, or (2) an appendix is attached to the marine document showing a net tonnage ascertained under the so-called "British rules" or the rules of any foreign country which have been accepted as substantially in accord with the rules of the U.S., in which case the tonnage so shown may be accepted and the date the appendix was issued shall be noted on the tonnage tax certificate, Customs Form 1002, and on the master's oath, Customs Form 1300. For the purpose of computing tonnage tax on a vessel with a tonnage mark and dual tonnages, the higher of the net tonnages stated in the vessel's marine document or tonnage certificate shall be used unless the Customs officer concerned is satisfied by report of the boarding officer, statement or certificate of the master, or otherwise that the tonnage mark was not submerged at the time of arrival. Whether the vessel has a tonnage mark, and if so, whether the mark was submerged on arrival, shall be noted on Customs Form 1300 by the boarding officer. **[MCLs 8/7/42; 27, 1242; TDs 68–216, 71–169.]**

(g) The decision of the Commissioner of Customs is the final administrative decision on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(h) Any person adversely affected by a decision of the Commissioner of Customs relating to the collection of tonnage tax, or to the refund of such tax when collected erroneously or illegally, may appeal the decision in the Court of International Trade provided that the appeal action is commenced in accordance with the rules of the Court within 2 years after the cause of action first accrues. **[TD 85–90.]**

§ 4.21 Exemptions from tonnage taxes.

(a) Tonnage taxes and light money shall be suspended in whole or in part whenever the President by proclamation shall so direct. **[BNGL 270/25; BMIN/BM 373/41; TD 49523.]**

(b) A vessel shall not be liable to the payment of tonnage tax or light money merely because— **[TDs 53187(1), 53399.]**

(1) It comes into port for bunkers (including water), sea stores, or ship's stores; transacts no other business in the port; and departs within 24 hours after its arrival.

(2) It arrives in distress, even though required to enter.

(3) It is brought into port by orders of U.S. naval authorities and transacts no business while in port other than the taking on of bunkers, sea stores, or ship's stores.

(4) It is a vessel of war or other vessel which is owned by, or under the complete control and management of the U.S. or the government of a foreign country, and which is not carrying passengers or merchandise in trade or, if in ballast, which is not arriving from a foreign port during the usual course of its employment as a vessel engaged in trade. **[TD 53399.]**

(5) It is a yacht or other pleasure vessel not carrying passengers or merchandise in trade.

(6) It is engaged exclusively in scientific activities.

(7) It is engaged exclusively in laying or repairing cables.

(8) It is engaged in whaling or other fisheries, even though it may have entered a foreign port for fuel or supplies, if it did not carry passengers or merchandise in trade.

(9) It is a passenger vessel making three trips or more a week between a port of the U.S. and a foreign port.

(10) It is used exclusively as a ferry boat, including a car ferry.

(11) It is a tug with a Great Lakes license endorsement on its vessel document, when towing vessels which are required to make entry.

(12) It is a documented vessel with a Great Lakes license endorsement which has touched at an intermediate foreign port or ports during a coastwise voyage. **[TD 83-214.]**

(13) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse dues or equivalent taxes are not imposed on vessels of the U.S.** **[TD 51912.]**

(14) [Reserved]

(15) It is a vessel entering directly from the Virgin Islands (U.S.), American Samoa, the islands of Guam, Wake, Midway, Canton, or Kingman Reef, or Guantanamo Bay Naval Station. **[TDs 51547, 55406, 72-264, 79-276.]**

(16) It is a vessel making regular daily trips between any port of the U.S. and any port in Canada wholly upon interior waters not navigable to the ocean, except that such a vessel shall pay tonnage taxes upon her first arrival in each calendar year.

(17) It is a vessel arriving at a port in the U.S. which, while proceeding between ports in the U.S., touched at a foreign port under circumstances which would have exempted it from making entry under § 441(4), Tariff Act of 1930, as amended (19 U.S.C. 1441(4)), had it touched at a U.S. port. (Sec. 441, 46 Stat. 712, as amended, R.S. 4214, as amended, 4219, as amended, 4220, 2793, as amended, 2792, as amended, 4221, 4225, as amended, 4226, sec. 1, 39 Stat. 286, 36 Stat. 234, R.S. 4227; 19 U.S.C. 1441, 46 U.S.C. 103, 121-125, 128-130, 132, 135) **[TDs 75-206, 55406.]**

§ 4.22 Exemptions from special tonnage taxes.

Vessels of the following nations are exempted by treaties, Presidential proclamations, or orders of the Secretary of the Treasury from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and are exempted from the payment of light money: **[TDs 50625, 51166, 51171, 51769, 52238, 52340, 52545, 52591, 53129, 54352, 55069, 55113, 55534, 56063, 56195, 56313, 56421, 56440, 56530, 56548, 66-11, 66-67, 66-106, 66-166, 66-235, 66-237, 66-264, 68-100, 70-21, 70-22, 70-112, 70-113, 70-117, 70-147, 70-156, 70-171, 70-204, 70-211, 70-234, 71-26, 71-80, 71-94, 72-254, 73-95, 73-123, 75-240, 76-279, 76-280, 77-3, 78-139, 78-157, 78-451, 79-134, 79-220, 79-258, 79-304, 80-255, 81-71, 81-199, 81-261, 82-16, 83-17, 84-57, 84-63, 88-15.]**

Algeria.
Arab Republic of Egypt.
Argentina.
Australia.
Austria.
Bahamas, The.
Bangladesh.
Barbados.
Belgium.
Bermuda.
Bolivia.
Brazil.
Bulgaria.
Burma.
Canada.
Chile.
Colombia.
Costa Rica.
Cuba.
Cyprus.
Czechoslovakia.
Denmark (including the Faeroe Islands).
Dominican Republic.
El Salvador.
Estonia.
Ethiopia.
Fiji.
Finland.
France.
Gambia, The.
German Democratic Republic.
German Federal Republic.
Ghana.
Great Britain (including the Cayman Islands).
Greece.
Greenland.
Guatemala.
Guinea, Republic of.
Guyana.
Haiti.
Honduras.
Iceland.
India.
Indonesia.
Iran.
Iraq.
Ireland (Eire).
Israel.
Italy.
Ivory Coast, Republic of.
Jamaica.
Japan.
Kenya.
Korea.
Kuwait.
Latvia.
Lebanon.
Liberia.
Libya.
Malaysia.
Malta.
Mauritius.
Mexico.
Monaco.
Morocco.
Nauru, Republic of.
Netherlands Antilles.
Netherlands.
New Zealand.
Nicaragua.
Nigeria.
Norway.
Oman.
Pakistan.
Panama.
Papua New Guinea.

** "Vessel entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the U.S. shall be exempt from the tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year." (46 U.S.C. 132) This statute applies to a vessel arriving in the U.S. on a voyage otherwise than by sea from a port in the province of Ontario, Canada, only.

Paraguay.
Peru.
Philippines.
Poland.
Portugal.
Qatar.
Rumania.
Saudi Arabia.
Senegal.
Singapore, Republic of.
Somali, Republic.
Spain.
Sri Lanka.
St. Vincent and the Grenadines.
Surinam, Republic of.
Sweden.
Switzerland.
Syrian Arab Republic.
Taiwan.
Thailand.
Togo.
Tunisia.
Turkey.
Union of South Africa.
Union of Soviet Socialist Republics.
United Arab Emirates.
Uruguay.
Vanuatu, Republic of.
Venezuela.
Yugoslavia.
Zaire.

(R.S. 4219, as amended, 4225, as amended, 4228, as amended; 46 U.S.C. 121, 128, 141)

Note: For FR citations affecting § 4.22, see List of CFR Sections Affected.

§ 4.23 Certificate of payment and cash receipt.

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 on which the control number of the cash receipt (Customs Form 5104) upon which payment was recorded shall be written. This certificate shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate, evidence of payment of tonnage tax shall be obtained from the district director to whom the payment was made **[TDs 53232, 84-232, 85-71.]**

§ 4.24 Application for refund of tonnage tax.

(a) The authority to make refunds in accordance with § 26 of the Act of June 26, 1884 (46 U.S.C. 8) of regular tonnage taxes described in § 4.20(a) is delegated to the several Regional Commissioners of Customs. If any doubt exists, the case shall first be referred to Headquarters, U.S. Customs Service for advice. **[BNGL 270/25; TDs 10284, 54232, 71-274.]**

(b) Each application for refund of regular or special tonnage tax or light money prepared in accordance with this section shall be filed with the Customs officer to whom payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded with any necessary report or recommendation to the Regional Commissioner of Customs. Applications for refund of special tonnage tax and light money (see § 4.20(c)) with the reports and recommendations submitted therewith shall be forwarded by the Regional Commissioner to the Commissioner of Customs for decision. Any refund authorized by the Regional Commissioner of Customs under paragraph (a) of this section or any refund of special tonnage tax or light money authorized by the Commissioner of Customs shall be made by the appropriate Customs officer. The records of tonnage tax shall be clearly noted to show each refund authorized. **[BMIN/CL 227/38; TDs 53399, 54232, 71-274.]**

(c) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality and name of the vessel, and the date, place, and amount of each payment for which refund is requested. The application shall be made within 1 year from date of the payment. A protest against a payment shall not be accepted as an application for its refund. **[TD 71-274.]**

(d) When the application is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from the appropriate Customs officer at the port where the application is submitted and from the appropriate Customs officer at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized.

(e) The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may be refunded as a result of such application. **[TD 71-274.]**

(f) The owner or operator of the vessel involved, or other party in interest, may file with the Regional Commissioner a petition addressed to the Commissioner of Customs for a review of the Regional Commissioner's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the Regional Commissioner's decision, shall completely identify the case, and shall set forth in detail the exceptions to the Regional Commissioner's decision. When such a petition has been filed, the Regional Commissioner shall immediately transmit both copies thereof and the entire file to Headquarters, U.S. Customs Service, together with any comments he may desire to submit. (Section 26, 23 Stat. 59, as amended; 46 U.S.C. 8.) (80 Stat. 379, § 3, 5 U.S.C. 301) **[TD 71-274.]**

Landing and Delivery of Cargo

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C.

288 [55] no passengers,[56] cargo,[57] baggage,[57] or other article [58] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S. or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden [60] on a vessel destined to a port or place outside the Customs territory of the U.S. if Customs supervision of such lading is required, until the district director shall have issued a permit or special license therefor on Customs Form 3171. **[TDs 50881, 51049, 53399, 54232; 3 Comp. Gen. 12; See CAM sec. 98(b)(2). TDs 52205, 52255, 53538, 70–121, 72–189, 73–27.]**

(b) Application for a permit or special license shall be made by the master, owner, or agent of the vessel on Customs Form 3171, and shall specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Arrangements, in the case of a term permit or term special license, shall be made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation shall be specifically noted on the application. **[TDs 52491, 72–189.]**

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been filed on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers [62]. When a carrier has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter relating to basic custodial bond conditions no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals. **[TDs 52491, 53461, 53626, 68–247, 72–189, 84–213.]**

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival. The permit or special license shall not become effective until the master shall have made preliminary or formal entry or, in the case of vessels not required to enter, the master shall have reported the arrival of the vessel.

(e) Stevedoring companies and others concerned in lading or unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before commencing such operation, since performance in the absence of such compliance render them severally liable to the penalties prescribed in § 453, Tariff Act of 1930,[59] even though they may not be responsible for taking the action necessary to secure compliance. **[TD 52204.]**

(f) The district director may issue a term permit on Customs Form 3171 which will remain in effect until revoked by the district director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours. **[TDs 53538, 55386, 68–247, 72–189, 84–213.]**

(g) The district director may issue a term special license on Customs Form 3171 which will remain in effect until revoked by the district director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage at night or on a Sunday or holiday when Customs supervision is required.

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[55] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the U.S., departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessels shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Commissioner of Customs may prescribe, notwithstanding any other provision of law: *Provided,* That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[56] "If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of $500 for each such passenger so unladen." (Tariff Act of 1930, sec. 454; 19 U.S.C. 1454)

[57] "* * * After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the collector as provided in § 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made." (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a))

[58] Vessels arriving in the U.S. from foreign ports may retain on board, without the payment of duty, all coal and other fuel, supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided,* That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the U.S., which are delayed in port for any cause, may be transferred under a permit by the collector and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon." (Tariff Act of 1930, sec. 446; 19 U.S.C. 1446).

The provisions of § 446, Tariff Act of 1930, do not apply to vessels of less than 5 net tons. (T.D. 45431)

[60] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forefeiture." (Tariff Act of 1930, § 453; 19 U.S.C. 1453)

[62] "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of § 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. * * *" (Tariff Act of 1930, § 451, as amended, 19 U.S.C. 1451)

[59] "No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the collector under the same conditions and limitations as pertain to the unlading of imported merchandise or merchandise being transported in bond." (Tariff Act of 1930, sec. 452, 19 U.S.C. 1452)

(See § 24.16 of this chapter regarding pleasure vessels.) **[TDs 68–247, 72–189, 84–213.]**

(h) A special license for the unlading or lading of a vessel at night or on a Sunday or holiday shall be refused by the district director if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity. **[TD 72–189.]**

(i) The district director shall not issue a permit or special license to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the U.S., except on compliance with one or more of the following conditions: **[TD 72–189.]**

(1) The merchandise shall have been duly entered and permits issued; or

(2) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or **[TDs 46106, 72–189, 84–213.]**

(3) The merchandise is to be discharged into the custody of the district director as provided for in § 490(b), Tariff Act of 1930.[63] **[TD 72–189.]**

(j) Bonds are not required under this section for vessels owned by the U.S. and operated for its account. **[TDs 49258, 50750.]**

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the district director in his discretion and under such conditions as he deems advisable may allow the required application for unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading at any time, and to grant requests on Customs Form 3171 for overtime services. **[TDs 53538, 68–247.]**

(l) A permit to unlade pursuant to this Part 4 or Part 122 of this chapter shall not be granted unless the district director determines that the applicant provides or the terminal at which the applicant will unlade the cargo provides (1) sufficient space, capable of being locked, sealed, or otherwise secured, for the storage immediately upon unlading of cargo whose weight-to-value ratio renders it susceptible to theft or pilferage and of packages which have been broken prior to or in the course of unlading; and (2) an adequate number of vehicles, capable of being locked, sealed, or otherwise secured, for the transportation of such cargo or packages between the point of unlading and the point of storage. A term permit to unlade shall be revoked if the district director determines subsequent to such issuance that the requirements of this paragraph have not been met. **[TDs 71–39, 88–12.]**

(m) A permit to unlade pursuant to this Part 4 or Part 122 of this chapter shall not be granted to an importing carrier, and a term permit to unlade previously granted to such a carrier shall be revoked, (1) if such carrier, within 30 days after the date of receipt of a written demand by the district director, does not furnish a written list of the names, addresses, social security numbers, and dates and places of birth of persons it employs in connection with the unlading, storage and delivery of imported merchandise; or (2) if, having furnished such a list, the carrier does not advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed in connection with the unlading, storage and delivery of imported merchandise within 10 days after such employment. If the employment of any such person is terminated, the carrier shall promptly advise the district director. For the purposes of this part, a person shall not be deemed to be employed by a carrier if he is an officer or employee of an independent contractor engaged by a carrier to load, unload, transport or otherwise handle cargo. (R.S. 2793, as amended, secs. 446, 448, 450–454, 490, 46 Stat. 713, 714, 715, as amended, 716, 726; 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490) **[TDs 71–39, 88–12.]**

§ 4.31 Unlading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped at any place in the U.S. or Customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under § 453 [64] or 586(a),[65] Tariff Act of 1930, if due notice is given to the district director at the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in § 586(f), Tariff Act of 1930, as amended.[66] The district director may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unlading or transshipment was necessary by reason of unavoidable cause. **[TDs 6603, 53268.]**

(b) The district director may then permit entry of the vessel and its cargo and permit the unlading of the cargo in such place in his district as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through Customs at the port where it is discharged or forwarded to the port of original destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unlading and

[63] "At the request of the consignee of any merchandise, or of the owner or master of the vessel, or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the collector after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made." (Tariff Act of 1930, § 490(b); 19 U.S.C. 1490(b))

[64] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture." (Tariff Act of 1930, sec. 453; 19 U.S.C. 1453)

[65] "The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $1,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited." (Tariff Act of 1930, sec. 586(a), as amended; 19 U.S.C. 1586(a))

[66] "Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the collector of the district within which such unlading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred." (Tariff Act of 1930, sec. 586(f), as amended, 19. U.S.C. 1586(f))

delivery took place at the port of original destination. (Secs. 453, 586, 46 Stat. 716, 749, as amended; 19 U.S.C. 1453, 1586)

§ 4.32 Vessels in distress; landing of cargo.

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into Customs custody and, if it has not been transported in violation of the coastwise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safekeeping.

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers shall be given in an amount to be determined by the district director to insure the proper disposition of the cargo, whether such cargo be dutiable or free. (Sec. 449, 46 Stat. 714; 19 U.S.C. 1449) **[TDs 47959, 84-213.]**

§ 4.33 Diversion of cargo.

(a) *Unlading at other than original port of destination.* A vessel may unlade cargo or baggage at an alternative port of entry to the port of original destination if: **[TD 77-255.]**

(1) It is compelled by any cause to put into the alternative port and the district director to the port issues a permit for the unlading of cargo or baggage; or

(2) As a result of an emergency existing at the port of destination, the district director authorizes the vessel to proceed in accordance with the residue cargo bond procedure to the alternative port. The owner or agent of the vessel shall apply for such authorization in writing, stating the reasons and agreeing to hold the district director and the Government harmless for the diversion.

(b) *Disposition of cargo or baggage at emergency port.* Cargo and baggage unladen at the alternative port under the circumstances set forth in paragraph (a) of this section may be: **[TD 77-255.]**

(1) Entered in the same manner as other imported cargo or baggage;

(2) Treated as unclaimed and stored at the risk and expense of its owner; or

(3) Reladen upon the same vessel without entry, for transportation to its original destination.

(c) *Substitution of ports of discharge on manifest.* After entry, the Cargo Declaration, Customs Form 1302, of a vessel may be changed at any time to permit discharge of manifested cargo at any domestic port in lieu of any other port shown on the Cargo Declaration, if: **[CIE 3244, 429, TDs 47959, 51610; 53101, 77-255.]**

(1) A written application for the diversion is made on the amended Cargo Declaration by the master, owner, or agent of the vessel to the district director of the port where the vessel is located, after entry of the vessel at that port;

(2) An amended Cargo Declaration, under oath, covering the cargo, which it is desired to divert, is furnished in support of the application and is filed in such number of copies as the district director shall require for local Customs purposes; and

(3) The certified traveling manifest is not altered or added to in any way by the master, owner, or agent of the vessel. When an application under paragraph (c)(1) of this section is approved, the district director shall securely attach an approved copy of the amended manifest to the traveling manifest and shall send one copy of the amended Cargo Declaration to the district director at the port where the vessel's bond was filed.

(d) *Retention of cargo on board for later return to the U.S.* If, as the result of a strike or other emergency at a U.S. port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the cargo returned to the U.S., an application may be made by the master, owner, or agent of the vessel to amend the vessel's Cargo Declaration, Customs Form 1302, under a procedure similar to that described in paragraph (c) of this section, except that a foreign port shall be substituted for the domestic port of discharge. If the application is approved, it shall be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, the district director is authorized to require such bond as he deems necessary to insure that export control laws and regulations are not circumvented. **[TDs 47959, 53101, 77-255.]**

§ 4.34 Prematurely discharged, overcarried, and undelivered cargo.

(a) *Prematurely landed cargo.* Upon receipt of a satisfactory written application from the owner or agent of a vessel establishing that cargo was prematurely landed and left behind by the importing vessel through error or emergency, the district director may permit inward foreign cargo remaining on the dock to be reladen on the next available vessel owned or chartered by the owner of the importing vessel for transportation to the destination shown on the Cargo Declaration, Customs Form 1302, of the first vessel, provided the importing vessel actually entered the port of destination of the prematurely landed cargo. Unless so forwarded within 30 days from the date of landing, the cargo shall be appropriately entered for Customs clearance or for forwarding in bond; otherwise, it shall be sent to general order as unclaimed. If the merchandise is so entered for Customs clearance at the port of unlading, or if it is so forwarded in bond, other than by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel, representatives of the importing vessel shall file at the port of unlading a Cargo Declaration in duplicate listing the cargo. The district director shall retain the original and forward the duplicate to the district director at the orginally intended port of discharge. **[TDs 52965, 53648, 77-255.]**

(b) *Overcarried cargo.* Upon receipt of a satisfactory written application by the owner or agent of a vessel establishing that cargo was not landed at its destination and was overcarried to another domestic port through error or emergency, the district director may permit the cargo to be returned in the importing vessel, or in another vessel owned or chartered by the owner of the importing vessel, to the destination shown on the Cargo Declaration, Customs Form 1302, of the importing vessel, provided the importing vessel actually entered the port of destination.[67a] **[TDs 73-175, 77-255.]**

[67a] See § 141.69(c) of this chapter for the conditions under which such merchandise and goods removed from a port of intended entry under these or certain other circumstances may subsequently be cleared under a consumption entry which had been filed therefor before the merchandise was removed from the port of intended entry.

(c) *Inaccessibly-stowed cargo.* Cargo so stowed as to be inaccessible upon arrival at destination may be retained on board, carried forward to another domestic port or ports, and returned to the port of destination in the importing vessel or in another vessel owned or chartered by the owner of the importing vessel in the same manner as other overcarried cargo. **[TD 77-255.]**

(d) *Application for forwarding cargo.* When it is desired that prematurely landed cargo, overcarried cargo, or cargo so stowed as to be inaccessible, be forwarded to its destination by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel in accordance with paragraph (a), (b), or (c) of this section, the required application shall be filed with the local district director at the port of premature landing or overcarriage by the owner or agent of the vessel. The application shall be supported by a Cargo Declaration, Customs Form 1302, in such number of copies as the district director may require. Whenever practicable, the application shall be made on the face of the Cargo Declaration below the description of the merchandise. The application shall specify the vessel on which the cargo was imported, even though the forwarding to destination is by another vessel owned or chartered by the owner of the importing vessel, and all ports of departure and dates of sailing of the importing vessel. The application shall be stamped and signed to show that it has been approved. **[TDs 50683, 52040, 52965, 53648, 77-255.]**

(e) *Manifesting prematurely landed or overcarried cargo.* One copy of the Cargo Declaration, Customs Form 1302, shall be certified by Customs for use as a substitute traveling manifest for the prematurely landed or overcarried cargo being forwarded as residue cargo, whether or not the forwarding vessel is also carrying other residue cargo. If the application for forwarding is made on the Cargo Declaration, the new substitute traveling manifest shall be stamped to show the approval of the application. If the application is on a separate document, a copy thereof, stamped to show its approval, shall be attached to the substitute traveling manifest. An appropriate cross-reference shall be placed on the original traveling manifest to show that the vessel has one or more substitute traveling manifests. A permit to proceed endorsed on a General Declaration, Customs Form 1301, issued to the vessel transporting the prematurely landed or overcarried cargo to its destination shall make reference to the nature of such cargo, identifying it with the importing vessel. **[TDs 52965, 63648, 71-169, 77-255.]**

(f) *Residue cargo procedure.* A vessel with prematurely landed or overcarried cargo on board shall comply upon arrival at all domestic ports of call with all the requirements of Part 4 relating to foreign residue cargo for domestic ports. The substitute traveling manifest, carried forward from port to port by the oncarrying vessel, shall be finally surrendered at the port where the last portion of the prematurely landed or overcarried cargo is discharged. **[TDs 71-169, 77-255.]**

(g) *Cargo undelivered at foreign port and returned to the U.S.* Merchandise shipped from a domestic port, but undelivered at the foreign destination and returned, shall be manifested as "Undelivered—to be returned to original foreign destination" if such a return is intended. The district director may issue a permit to retain the merchandise on board, or he may, upon written application of the steamship company, issue a permit on a Delivery Ticket, Customs Form 6043, allowing the merchandise to be transferred to another vessel for return to the original foreign destination. No charge shall be made against the bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in section 113.64 of this chapter. The items shall be remanifested outward and an explanatory reference of the attending circumstances and compliance with export requirements noted. **[TDs 52965, 53648, 77-255, 84-213, 85-123.]**

§ 4.35 Unlading outside port of entry.

(a) Upon written application from the interested party, the district director concerned, if he considers it necessary, may permit any vessel laden with merchandise in bulk to proceed, after entry, to any place outside the port where the vessel entered which such district director may designate for the purpose of unlading such cargo.[68] **[TD 52124.]**

(b) In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unlading and delivery of the cargo may be required by the district director. (Sec. 447, 46 Stat. 714; 19 U.S.C. 1447) **[TDs 37128, 50053.]**

§ 4.36 Delayed discharge of cargo.

(a) When pursuant to § 457, Tariff Act of 1930,[69] customs officers are placed on a vessel which has retained merchandise on board more than 25 days after the date of the vessel's arrival, their compensation and subsistence expenses shall be reimbursed to the Government by the owner or master.

(b) The compensation of all Customs officers and employees assigned to supervise the discharge of a cargo within the purview of § 458, Tariff Act of 1930,[70] after the expiration of 25 days after the date of the vessel's entry shall be reimbursed to the Government by the owner or master of the vessel.

(c) When a cargo within the purview of the proviso to the first subdivision of § 431, Tariff Act of 1930 [71] is manifested

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[68] "It shall be unlawful * * * to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided,* * * * That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest." (Tariff Act of 1930, sec. 447; 19 U.S.C. 1447)

[69] "Whenever any merchandise remains on board a vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the collector may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle." (Tariff Act of 1930, sec. 457; 19 U.S.C. 1457)

[70] "The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five (25) days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel." (Tariff Act of 1930, sec. 458; 19 U.S.C. 1458)

[71] "* * * the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within 15 days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered. * * *" (Tariff Act of 1930, sec. 431; 19 U.S.C. 1431)

"for orders" upon the arrival of the vessel, no amendment of the manifest to show another port of discharge shall be permitted after 15 days after the date of the vessel's arrival, except as provided for in § 4.33.

(d) All reimbursements payable in accordance with this section shall be paid or secured to the district director before clearance is granted to the vessel. (R.S. 4206, secs. 431, 457, 458, 46 Stat. 710, as amended, 716, 717; 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. 100)

§ 4.37 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain on the wharf or pier until 5 p.m. on the fifth working day after the day the vessel was entered.[72] At the expiration of such period, any merchandise or baggage so remaining shall be deposited in the public stores or a general-order warehouse, except that, at the written request of the owner, agent, or master of the vessel, filed in duplicate on Customs Form 3189, and at the risk of the owner of the vessel, the district director may issue a lay order allowing such merchandise or baggage to remain on the wharf or pier properly protected for a further period, which shall be specified in the order. The application for an initial lay order to allow the merchandise to remain on the wharf or pier beyond the fifth working day may be included, if the district director approves, in the space provided therefor in the application made on Customs Form 3171 for a permit to lade or unlade. **[TDs 40212, 53461.]**

(b) All merchandise or baggage unladen from a vessel for which no permit has been received before expiration of the original 5-day period, or extension thereof, shall be sent to the public stores or a general-order warehouse and held as unclaimed at the risk and expense of the consignee or owner.[73] **[TD 53461.]**

(c) Merchandise unladen after the expiration of the 25-day period prescribed in § 457, Tariff Act of 1930, for which no Customs permit has been presented to the discharging inspector, shall be sent forthwith by the district director to the public stores or a general-order warehouse and stored at the expense and risk of the owner of such merchandise.[73]

(d) Merchandise taken into the custody of the district director pursuant to § 490(b), Tariff Act of 1930,[74] shall be sent to the public stores or a general-order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the owner.

(e) Any merchandise which is apt to decrease in weight after importation shall be weighed before it is deposited in the public stores or a general-order warehouse.

(f) Whenever, pursuant to § 457 or 490, Tariff Act of 1930, as amended (19 U.S.C. 1457, 1490), the district director shall take possession of a cargo which is unclaimed and not unladen, he shall require, as a condition for granting a permit to discharge, that the vessel be removed at the expense of the owner to the wharf, pier, or other place most convenient to the general order stores. (R.S. 251, as amended, secs. 448, 457, 490, 624, 46 Stat. 714, 716, 726, 759; (19 U.S.C. 66, 1448, 1457, 1490, 1624)) **[TD 74-114.]**

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the district director only after the merchandise has been entered and, except as provided for in § 141.102(d) or Part 142 of this chapter, the duties thereon, if any, have been estimated and paid. When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The importing carrier shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the later carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel. **[TDs 52773, 73-175, 84-213.]**

(b) When packages of merchandise bear marks or numbers which differ from those appearing on the Cargo Declaration, Customs Form 1302, of the importing vessel for the same packages and the importer or a receiving bonded carrier, with the concurrence of the importing carrier, makes application for their release under such marks or numbers, either for consumption or for transportation in bond under an entry filed therefor at the port of discharge from the importing vessel, the district director may approve the application upon condition that (1) the contents of the packages be identified with an invoice or transportation entry as set forth below and (2) the applicant furnish at his own expense any bonded cartage or lighterage service which the granting of the application may require. The application shall be in writing in such number of copies as may be required for local Customs purposes. Before permitting delivery of packages under such an application, the district director shall cause such examination thereof to be made as will reasonably identify the contents with the invoice filed with the consumption entry. If the merchandise is entered for transportation in bond without the filing of an invoice, such examination shall be made as will reasonably identify the contents of the packages with the transportation entry. **[TD 77-255.]**

(c) If the district director determines that, in a port or portion of a port, the volume of cargo handled, the incidence of theft or pilferage, or any other factor related to the protection of merchandise in Customs custody requires such

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[72] "* * * After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the collector, as provided in § 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage until entry thereof is made." (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a)).

[73] "Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the collector, entry of such merchandise cannot be made for want of proper documents or other cause, or whenever the collector believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production." (Tariff Act of 1930, sec. 490(a); 19 U.S.C. 1490(a))

[74] See footnote 63, § 4.30.

measures, he shall require as a condition to the granting of a permit to release imported merchandise that the importer or his agent present to the carrier or his agent a fully executed pickup order in substantially the following format, in triplicate, to obtain delivery of any imported merchandise: **[TD 71-39.]**

_____ Pickup Order

_____ is authorized to pick up the merchandise indicated below

_____ (Trucker name)

COD—— Bank release—— Collect——

Broker Name and Authorized Signature (if applicable)

Marks and Numbers	Pcs.	Description of goods	Entry No.	Importing carrier and AWB Number or B/L Number	Signature and date of receiving carrier	Remarks

Delivered quantities verified .....

Customs officer badge No.

.....

Date

The pickup order shall contain a duly authenticated customhouse broker's signature, unless it is presented by a person properly identified as an employee or agent of the ultimate consignee. When delivered quantities are verified by a Customs officer, he shall certify all copies of the pickup order, returning one to the importer or his agent and two to the carrier making delivery.

(d) When the provisions of paragraph (c) of this section are invoked by the district director and verification of delivered quantities by Customs is required, a permit to release merchandise shall be effective as a release from Customs custody at the time that the delivery of the merchandise covered by the pickup order into the physical possession of a subsequent carrier or an importer or the agent of either is completed under the supervision of a Customs officer, and only to the extent of the actual delivery of merchandise described in such pickup order as verified by such Customs officer. (Secs. 448, 505, 46 Stat. 714, 732; 19 U.S.C. 1448, 1505) **[TD 71-39.]**

§ 4.39 Stores and equipment of vessels and crews' effects; unlading or lading and retention on board.

(a) The provisions of § 4.30 relating to unlading under a permit on Customs Form 3171 are applicable to the unlading of articles, other than cargo or baggage, which have been laden on a vessel outside the Customs territory of the U.S., regardless of the trade in which the vessel may be engaged at the time of unlading, except that such provisions do not apply to such articles which have already been entered. **[TDs 21324, 22433, 24340, 24497, 26864, 28321, 28855, 35824, 39340, 40934, 45231, 45690 (5), 46062, 50263 (1), 50380 (5), 53336.]**

(b) Any articles other than cargo or baggage landed for delivery for consumption in the U.S. shall be treated in the same manner as other imported articles.[75] A notation as to the landing of such articles, together with the number of the entry made therefor, shall be made on the vessel's store list, but such notation shall not subject the articles to the requirement of being included in a post entry to the manifest. **[TD 53336.]**

(c) Bags or dunnage constituting equipment of a vessel may be landed temporarily and reladen on such vessel under Customs supervision without entry.

(d) Articles claimed to be sea or ships' stores which are in excess of the reasonable requirements of the vessel on which they are found shall be treated as cargo of such vessel.

(e) Under § 446, Tariff Act of 1930, district directors may permit narcotic drugs, except smoking opium, in reasonable quantities and properly listed as medical stores to remain on board vessels if satisfied that such drugs are adequately safeguarded and used only as medical supplies.

(f) Application for permission to transfer bunkers, stores or equipment as provided for in the proviso to § 446, Tariff Act of 1930, shall be made and the permit therefor granted on Customs Form 3171. (Secs. 432, 446, 46 Stat. 710, 713; 19 U.S.C. 1432, 1446)

§ 4.40 Equipment, etc., from wrecked or dismantled vessels.

Ship's or sea stores, supplies, and equipment of a vessel wrecked either in the waters of the U.S. or outside such waters, on being recovered and brought into a U.S. port, and like articles landed from a vessel dismantled in a U.S. port shall be subject to the same Customs treatment as would apply if the articles were landed from a vessel arriving in the ordinary course of trade. Parts of the hull and fittings recovered from a vessel which arrived in the U.S. in the course of navigation and was wrecked in the waters of the U.S. or was dismantled in this country are free of duties and import taxes, but if such articles are recovered from vessels outside the waters of the U.S. and brought into a U.S. port, they shall be treated as imported merchandise.

[75] See footnote 58, § 4.30.

(Sec. 446, 46 Stat. 713; 19 U.S.C. 1446) **[TDs 19181, 19220, 22433.]**

§ 4.41 Cargo of wrecked vessel.

(a) Any cargo landed from a vessel wrecked in the waters of the U.S. or on the high seas shall be subject at the port of entry to the same entry requirements and privileges as the cargo of a vessel regularly arriving in the foreign trade. In lieu of a Cargo Declaration, Customs Form 1302, to cover such cargo, the owner, underwriter (if the merchandise has been abandoned to him), or the salvor of the merchandise shall make entry on Customs Form 7501, and any such applicant shall be regarded as the consignee of the merchandise for Customs purposes.[76] **[TDs 7554, 8028, 9598, 77-255, 87-75.]**

(b) All such merchandise shall be taken into possession by the district director of the port in which it shall first arrive and be retained in his custody pending entry. If it is not entered by the person entitled to make entry, or is not disposed of pursuant to court order, it shall be subject to sale as unclaimed merchandise. **[TD 23155.]**

(c) If such merchandise is from a vessel which has been sunk in waters of the U.S. for 2 years or more and has been abandoned by the owner, any person who has salvaged the cargo shall be permitted to enter the merchandise in the district in which the vessel was wrecked free of duty upon the facts being established to the satisfaction of the district director at the port of entry.[77] Any other such merchandise is subject to the same tariff classification as like merchandise regularly imported in the ordinary course of trade. **[TD 11498.]**

(d) If the merchandise is libeled for salvage,[78] the district director shall notify the U.S. attorney of the claim of the U.S. for duties, and request him to intervene for such duties.

Passenger on Vessels

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the U.S. from foreign territory and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters,[79] shall submit a passenger and crew list as required by § 4.7(a). If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passengers, the additional information respecting such passengers required by Customs and Immigration Form I-418 shall be included therein. **[TDs 51107, 51547, 51901, 54267, 54820, 71-169.]**

(b) A passenger within the meaning of this part, is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business. (Sec. 9, 22 Stat. 189, as amended; sec. 431, 46 Stat. 710, as amended; 19 U.S.C. 1431, 46 U.S.C. 158) **[BNGL 117, 516, TD 82-145.]**

Foreign Clearances

§ 4.60 Vessels required to clear.

(a) Except as otherwise provided for in this section, every vessel bound for a foreign port or ports shall be cleared[80] for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a U.S. citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466–1467 and not engaged in trade nor violating the Customs or navigation laws of the U.S. and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) Any documented vessel with a Great Lakes license endorsement which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel.[81] (See § 4.82). **[TD 83-214.]**

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[76] "* * * The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the U.S. may be regarded as the consignees."* * * (Tariff Act of 1930, sec. 483; 19 U.S.C. 1483)

[77] "Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the U.S., and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 310; 19 U.S.C. 1310)

[78] Salvors have an uncertain interest in the goods salved, dependent upon the decree of a competent tribunal, and have a presumptive right without such decree to possession of merchandise salved by them from abandoned wrecks. The salvors are entitled in either case to entry of derelict or wrecked goods. (Secs. 310, 483, 46 Stat. 690, 721; 19 U.S.C. 1310, 1483)

[79] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the U.S. on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

[80] "The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof: whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. If any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the U.S.) departs from any port or place in the U.S. without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 or less than $500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (see stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the U.S. until the said penalty is paid or secured: * * *" (46 U.S.C. 91)

"Whenever, under any provision or provisions of any statute of the U.S., it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or pursuer of such vessel; such acts shall have the same force and effect as if performed by masters of such vessels: *Provided*, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U.S.C. 91a) (For clearance via domestic ports, see § 4.87).

[81] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the U.S., departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 298)

(3) A vessel exempted from entry by § 441, Tariff Act of 1930.[93] (See § 4.5.) **[TD 53336.]**

(4) A vessel of less than 5 net tons which departs from the U.S. to proceed to a contiguous country otherwise than by sea. **[TD 53538.]**

(c) Vessels which merely transit the Panama Canal without transacting any business there shall not be required to be cleared because of such transit. **[TD 79–276.]**

(d) In the event that departure is delayed beyond the second day after clearance, the delay shall be reported within 72 hours after clearance to the district director who shall note the fact of detention on the certificate of clearance and on the official record of clearance. When the proposed voyage is canceled after clearance, the reason therefor shall be reported in writing within 24 hours after such cancellation and the certificate of clearance and related papers shall be surrendered. **[TD 51049.]**

(e) No vessel shall be cleared for the high seas *except,* a vessel bound to another vessel on the high seas to—

(1) Transship export merchandise which it has transported from the U.S. to the vessel on the high seas; or

(2) Receive import merchandise from the vessel on the high seas and transport the merchandise to the U.S. [94] **[TD 85–91.]**

§ 4.61 Requirements for clearance.

(a) Application for clearance for a vessel intending to depart for a foreign port shall be made by filing the oath; Customs Form 1300, and a General Declaration, Customs Form 1301, by or on behalf of the master at the customhouse. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. Clearance shall be granted on Customs Form 1378. **[Bas v. Steele, Fed. Case No. 1088. TDs 830, 2795, 39308, 50462, 51912, 53775, 53799, 71–169.]**

(b) Before clearance is granted to a vessel bound to a foreign port, the district director shall verify compliance with the requirements in respect of the following matters which are more fully stated in the provisions of law or of these regulations indicated in the list: **[MCL 25/42, TDs 52675, 68–217, 69–210, 70–213, 73–250, 77–255.]**

(1) Accounting for inward cargo (§ 4.62).

(2) Outward Cargo Declarations; shippers export declarations (§ 4.63).

(3) Documentation (§ 4.64).

(4) Verification of nationality and tonnage (§ 4.65).

(5) Verification of inspection (§ 4.66).

(6) Inspection under State laws.[94]

(7) Closed ports or places (§ 4.67).

(8) Crew; passengers (§ 4.68).

(9) Shipping articles and enforcement of Seamen's Act (§ 4.69).

(10) Medicine and slop chests.[95]

(11) Load line regulations (§ 4.65a). **[TDs 74–39, 75–133.]**[96]

(12) Carriage of U.S. securities, etc.[97]

(13) Carriage of mail.[98]

(14) Pratique (§ 4.70).

(15) Inspection of vessels carrying livestock (§ 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (§ 4.72).

(17) Tobacco seed and plants.[99]

(18) Neutrality exportation of arms and munitions (§ 4.73).

(19) Payment of State and Federal fees and fees due the Government of the Virgin Islands of the U.S.[100]

(20) Orders restricting shipping (§ 4.74).

(21) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the U.S. (§ 4.14).

(22) Illegal discharge of oil (§ 4.66a).

(23) Attached or arrested vessel.[100a]

(24) Immigration laws.[100b]

(c) A new vessel built in the U.S. for foreign account shall be cleared under a certificate of record, Coast Guard Form 1316, in lieu of a marine document.

(d) Clearance shall not be granted to any foreign vessel using the flag of the U.S. or any distinctive signs or markings indicating that the vessel is an American vessel.[101]

§ 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted by correction of the Customs Form 1302–A, but the vessel may be cleared and the adjustment deferred if the discharging officer's report has not been received. (See § 4.12.) **[TDs 53336, 77–255, 84–193.]**

§ 4.63 Outward cargo declaration; shippers' export declarations.

(a) No vessel shall be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports (see § 4.87(b)), unless there has been

[93] See footnote 5, § 4.3.

[94] Collectors may permit vessels to proceed to sea to adjust compasses, try out new machinery, clean tanks, etc., without requiring formal clearance. (R.S. 2793, as amended, 4197, as amended; 19 U.S.C. 288, 46 U.S.C. 91, 111, 123)

[95] The collectors and other officers of the customs shall pay due regard to the inspection laws of the States in which they may respectively act, in such manner that no vessel having on board goods liable to inspection shall be cleared until the master, or other proper person, shall have produced such certificate that all such goods have been duly inspected, as the laws of the respective States may require to be produced to collectors or other officers of the customs." (46 U.S.C. 97)

[96] See 46 U.S.C. 666, 669, 670, and 671.

[97] [Reserved]

[98] "All vessels belonging to citizens of the U.S., and bound from any port in the U.S. to any other port therein, or to any foreign port, or from any foreign port to any port in the U.S. shall, before clearance, receive on board all such bullion, coin, U.S. notes and bonds and other securities, as the Government of the U.S. or any department thereof, or any minister, consul, vice consul, or other agent of the U.S. abroad, shall offer, and shall securely convey and promptly deliver the same to the proper authorities or consignees, on arriving at the port of destination; and shall receive for such service such reasonable compensation as may be allowed to other carriers in the ordinary transactions of business." (46 U.S.C. 98)

[99] See § 4.63(b), 18 U.S.C. 1724 and 39 U.S.C. 496.

[100] "It shall be unlawful to export any tobacco seed and/or live tobacco plants from the U.S. or any Territory subject to the jurisdiction thereof, to any foreign country, port, or place, unless such exportation and/or transportation is in pursuance of a written permit granted by the Secretary of Agriculture. Such permit shall be granted by the Secretary only upon application therefor and after proof satisfactory to him that such seed or plants are to be used for experimental purposes only." (7 U.S.C. 516)

[100a] "Previous to a clearance being granted to any vessel, outward bound, the legal fees which shall have accrued on such vessel shall be paid at the offices where such fees are respectively payable; and receipts for the same shall be produced to the collector or other officer whose duty it may be to grant clearances, before a clearance is granted." (46 U.S.C. 100)

[100b] See Federal Rules of Civil Procedure, Supplemental Rule (Admiralty and Maritime) E(4)(b) (28 U.S.C. Appendix).

[100c] See 8 U.S.C. 1221, 1223, 1227, 1253, 1281, 1283–1286, 1322, and 1323; 8 C.F.R. 280 (CRA 17–18–A).

[101] "It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the U.S. thereon, or to make use of any distinctive signs or markings, indicating that the same is an American vessel." (22 U.S.C. 454a) (Secs. 1–9, 49 Stat. 886–891, as amended, sec. 1–12, 87 Stat. 418–421 (46 U.S.C. 86–86i, 88–88i, 100))

filed with the appropriate Customs officer at the port from which clearance is being sought:

(1) A Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A. Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a properly executed Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, and export declarations as are required by pertinent regulations of the Bureau of the Census, Department of Commerce; or

(2) An incomplete Cargo Declaration as provided for in § 4.75.

(b) Except as hereafter stated, the number of the export declaration covering each shipment for which an authenticated export declaration is required shall be shown on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, in the marginal column headed 'B/L No." If an export declaration is not required for a shipment, a notation shall be made on the Cargo Declaration Outward with Commercial Forms (Customs Form 1302-A) describing the basis for the exemption with a reference to the number of the section in the Census Regulations (see 15 CFR 30.39, 30.50-30.57) where the particular exemption is provided. If shipments are exempt on the basis of value and destination, the appearance of the value and destination on a bill of lading or other commercial documents is acceptable as evidence of the exemption and reference to the applicable section in the Census Regulations is not required.

(c) The following minimal information shall be included on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (other information required to be on a Customs Form 1302-A as shown on the form itself must also be included thereon) or on attached copies of bills of lading or equivalent commercial documents:

(1) Name and address of shipper;

(2) Description of the cargo (see paragraph (d) of this section);

(3) Number of packages and gross weight (see paragraph (d) of this section);

(4) Name of vessel or carrier;

(5) Port of exit (this shall be the port where the merchandise is loaded on the vessel); and

(6) Port of destination (this shall be the foreign port of discharge of the merchandise).

(d) If the bills of lading or equivalent commercial documents attached to the Customs Form 1302-A show on their face the cargo information required by columns 6, 7, and either column 8 or 9, of the Customs Form 1302-A, that information need not be shown again on the Customs Form 1302-A. However, in that case, the cargo information must be incorporated by a suitable reference on the face of the Customs Form 1302-A such as "Cargo as per attached commercial documents."

(e) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, or commercial document attached to the Cargo Declaration and made a part thereof in accordance with paragraph (a)(1) of this section, shall clearly show for such shipment the number, date, and class of such Customs entry or withdrawal (i.e., T. & E., Wd. T. & E., I.E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the merchandise is laden for exportation.

(f) Customs officers shall accept a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see 4.7a(c)(3)) that the declaration has been prepared on the basis of information furnished by the shipper. **[TDs 38410, 71-169, 77-255, 81-19, 84-193.]**

§ 4.64 Documentation.

No clearance shall be granted to any documented vessel bound to a foreign port or place unless it has a Certificate of Documentation with a registry or, if departing for Canada, a Great Lakes license endorsement. **[TD 83-214.]**

§ 4.65 Verification of nationality and tonnage.

The nationality and tonnage of a vessel shall be verified by examination of its marine document. If such examination discloses that insufficient tonnage tax was collected on entry of the vessel, no clearance shall be granted until the deficiency is paid.

§ 4.65a Load lines.

(a) If a district director of Customs is notified by an officer of the U.S. Coast Guard that a detention order has been issued against a vessel engaged in the foreign trade under the International Voyage Load Line Act of 1973, clearance shall not be granted until the order is withdrawn. **[TD 75-133.]**

(b) If a district director of Customs issues a detention order under the Coastwise Load Line Act, 1935, as amended, or is notified by an officer of the U.S. Coast Guard that a detention order has been issued against a vessel under the aforesaid Act, clearance shall not be granted until the order is withdrawn. (Secs. 1-9, 49 Stat. 888-891, as amended, secs. 1-12, 87 Stat. 418-421 (46 U.S.C. 86-86i, 88-881))

§ 4.66 Verification of inspection.

(a) No clearance shall be granted unless the district director is satisfied that a proper certificate of inspection is in force and the vessel is in compliance with such certificate, if the vessel is— **[TDs 5740, 56173.]**

(1) A vessel of the U.S. required to be inspected as specified in Title 46, Code of Federal Regulations. **[TD 69-266.]**

(2) A foreign vessel carrying passengers from the U.S.

(b) In the case of vessels of foreign nations which are signatories of the International Convention for the Safety of Life at Sea, 1948, carrying passengers from the U.S., an unexpired Certificate of Examination for Foreign Passenger Vessel, Form CG-989, or an unexpired Certificate for Foreign Vessel to Carry Persons in Addition to Crew, Form CG-3463, issued by the U.S. Coast Guard, may be accepted as evidence that a proper certificate of inspection is in force and the vessel is in compliance with such certificate. **[TDs 53390, 56173.]**

(c) In the case of vessels of the U.S. subject to inspection proceeding to another port for repairs, a valid Permit to Proceed to Another Port for Repairs, Form CG-948, issued by the U.S. Coast Guard, shall be accepted in lieu of the certificate of inspection required by this section. (R.S. 4197, as amended, 4496; 46 U.S.C. 91, 494) **[TD 56173.]**

§ 4.66a Illegal discharge of oil and hazardous substances.

If a district director receives a request from an officer of the U.S. Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for knowingly discharging oil into or upon the navigable waters of the U.S., adjoining shorelines, or into or upon the waters of the contiguous zone in quantities determined to be harmful by appropriate authorities, such clearance shall not be granted until the request is withdrawn or until the district director is informed that a bond or other surety satisfactory to the Coast Guard has been filed. (Sec. 2, 86 Stat. 862, et seq., as amended; R.S. 4197, as amended (33 U.S.C. 1321, 46 U.S.C. 91)) **[TDs 70-213, 82-28.]**

§ 4.66b Pollution of coastal and navigable waters.

(a) If any Customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters or any tributary of any navigable waters in violation of § 13 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), or any hazardous substance is being or has been discharged into or upon the navigable waters of the U.S., adjoining shorelines, or into or upon the waters of the contiguous zone in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1321), he shall promptly furnish to the district director a full report of the incident, together with the names of witnesses and, when practicable, a sample of the material discharged from the vessel in question. **[TDs 72-211, 73-18, 82-28.]**

(b) The district director shall forward this report immediately, without recommendation, to the district commander of the Coast Guard district concerned and a copy of such report shall be furnished to Headquarters, U.S. Customs Service. (30 Stat. 1152; Sec. 2, 86 Stat. 862, et seq., as amended (33 U.S.C. 407, 1321)) **[TDs 73-18, 82-28.]**

§ 4.66c Oil pollution by oceangoing vessels.

(a) If a district director receives a request from a Coast Guard officer to refuse or revoke the clearance or permit to proceed of a vessel because the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine or civil penalty under the provisions of 33 U.S.C. 1908 for violating the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol), the Act to Prevent Pollution from Ships, 1980 (33 U.S.C. 1901–1911), or regulations issued thereunder, such clearance or a permit to proceed shall be refused or revoked. Clearance or a permit to proceed may be granted when the district director is informed that a bond or other security satisfactory to the Coast Guard has been filed.

(b) If a district director receives a notification from a Coast Guard officer that an order has been issued to detain a vessel required to have an International Oil Pollution Prevention (IOPP) Certificate which does not have a valid certificate on board, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

(c) If a district director receives a notification from a Coast Guard officer to detain a vessel operated under the authority of a country not a party to the MARPOL Protocol which does not have a valid certificate on board showing that the vessel has been surveyed in accordance with and complies with the requirements of the MARPOL Protocol, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required. **[TDs 84-36, 84-148.]**

§ 4.67 Closed ports or places.

No foreign vessel shall be granted a clearance or permit to proceed to any port or place from which such vessels are excluded by orders or regulations of the U.S. Navy Department except with the prior approval of that Department. **[TD 49546.]**

§ 4.68 Crew; passengers.

(a) Clearance shall not be granted to any vessel bound on a foreign voyage or engaged in the whale fishery until a crew list has been delivered to the district director in duplicate on Customs and Immigration Form I—418. The district director shall certify the duplicate copy and return it to the master for later presentation to Customs (see § 4.9(b)). **[BMIN/BM 441/42. TDs 53876, 54267, 83-214.]**

(b) No vessel shall be granted a clearance while it has on board any citizen of the U.S. except in accordance with the rules and regulations prescribed by the Secretary of State pursuant to Proclamation 2523 issued by the President on November 14, 1941 (3 CFR, 1943 Cum. Supp.).

(c) No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall be granted a clearance at the port or place of departure from the U.S. unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission evidencing compliance with §§ 2 and 3 of Public Law 89-777 (46 U.S.C. 817d, 817e). (R.S. 4573, secs. 2, 3, 80 Stat. 1356, 1357; 46 U.S.C. 674, 817d, 817e) (80 Stat. 379; 5 U.S.C. 301) **[TD 67-214.]**

§ 4.69 Shipping articles and enforcement of Seamen's Act.

No vessel of the U.S. bound for a foreign port outside the British North American possessions, the West Indies, and Mexico shall be granted final clearance until there has been presented to the district director at the port of final departure the shipping articles of the vessel executed before a shipping commissioner on Coast Guard Form 705, 705-A, or 705-B; nor shall any vessel, bound for a foreign port, be granted final clearance until the district director is satisfied that there has been full compliance with the pertinent requirements of §§ 11 and 13 of the Seamen's Act of March 4, 1915 (46 U.S.C. 599, 672), and the Coast Guard regulations issued thereunder, relating to allotments of wages, the language test, and the crew.

§ 4.70 Pratique.

No clearance shall be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service unless it has been issued a certificate of free pratique or has been remanded to another port in the U.S. **[TD 51912.]**

§ 4.71 Inspection of livestock.

A proper export inspection certificate issued by the Veterinary Services, Animal and Plant Health Inspection Service, Department of Agriculture, shall be filed before the clearance of a vessel carrying horses, mules, asses, cattle, sheep, swine, or goats (9 CFR pt. 91). **[TD 79–32.]**

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) No clearance shall be granted to any vessel carrying meat or meat-food products, as defined and classified by U.S. Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection until there have been filed with the district director such copies of export certificates concerning such meat or meat-food products as are required by the pertinent regulations of the U.S. Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection (9 CFR, Part 322). **[TDs 51912, 55247, 78–99.]**

(b) No clearance shall be granted to any vessel carrying tallow, stearin, oleo oil, or other rendered fat derived from cattle, sheep, swine, or goats for export from the U.S., which has not been inspected, passed, and marked by the U.S. Department of Agriculture, unless the district director is furnished with a certificate by the exporter that the article is inedible. **[TD 53399.]**

§ 4.73 Neutrality; exportation of arms and munitions.

(a) Clearance shall not be granted to any vessel if the district director has reason to believe that her departure or intended voyage would be in violation of any provision of the Neutrality Act of 1939 or other neutrality law of the U.S.,[104] or of any regulation or instruction issued pursuant to any such law. **[TDs 34695, 34899, 35205, 39058, 43019, 48525.]**

(b) The district director shall refuse clearance for and detain any vessel manifestly built for warlike purposes and about to depart from the U.S. with a cargo consisting principally of arms and munitions of war [105] when the number of men intending to sail or other circumstances render it probable that the vessel is intended to commit hostilities against the subjects, citizens, or property of any foreign country, with which the U.S. is at peace, until the decision of the President thereon is received, or until the owners shall have given bond or security in double the value of the vessel and its cargo that she will not be so employed.

(c) A district director shall promptly communicate all the facts to Headquarters, U.S. Customs Service if he learns while the U.S. is at peace that any vessel of a belligerent power which has arrived as a merchant vessel is altering, or will attempt to alter, her status as a merchant vessel so as to become an armed vessel or an auxiliary to armed vessels of a foreign power. **[TDs 34693, 34811.]**

(d) If a district director has reason to believe during the existence of a war to which the U.S. is not a party that any vessel in his district is about to carry arms, munitions, supplies, dispatches, information, or men to any warship or tender or supply ship of a belligerent nation, he shall withhold the clearance of such vessel and report the facts promptly to Headquarters, U.S. Customs Service.

§ 4.74 Transportation orders.

Clearance shall not be granted to any vessel if the district director has reason to believe that her departure or intended voyage would be in violation of any provision of any transportation order, regulation, or restriction issued under authority of the Defense Production Act of 1950 (50 U.S.C. App. 2061–2066). (R.S. 4197, as amended; 46 U.S.C. 91) **[TDs 52675, 53336, 55876.]**

§ 4.75 Incomplete manifest; incomplete export declarations; bond.

(a) *Pro forma manifest.* Except as provided for in § 4.75(c), if a master desiring to clear his vessel for a foreign port does not have available for filing with the district director a complete Cargo Declaration Outward with Commercial Forms, Customs Form 1302–A (see § 4.63) in accordance with 46 U.S.C. 91, or all required shipper's export declarations (see 15 CFR 30.24), the district director may accept in lieu thereof an incomplete manifest (referred to as a pro forma manifest) on the General Declaration, Customs Form 1301, if there is on file in his office a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, executed by the vessel owner or other person as attorney in fact of the vessel owner. The legend, "This incomplete Cargo Declaration is filed in accordance with § 4.75, Customs Regulations," shall be inserted in item 16 of the General Declaration. The form shall be appropriately modified to indicate that it is an incomplete Cargo Declaration, and the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)), shall be executed.

(b) *Time in which to file complete manifest and export declarations.* Not later than the fourth business day after clearance from each port in the vessels's itinerary, the master, or the vesel's agent on behalf of the master, shall deliver to the district director at each port a complete Cargo Declaration Outward with Commercial Forms, Customs Form 1302–A, in accordance with § 4.63, of the cargo laden at such port together with duplicate copies of all required shipper's export declarations for such cargo and a General Declaration on Customs Form 1301. The oath of the master of agent on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)), shall be properly executed before acceptance. The statutory grade period of 4 days for filing the complete manifest and missing export declarations begins to run on the first day (exclusive of any day on which the customhouse is not open for marine business) following the date on which clearance is granted.

(c) *Countries for which vessels may not be cleared until complete manifests and shipper's export declarations are filed.* To aid the Customs Service in the enforcement of export laws and regulations, no vessel shall be cleared for any port in the following countries until a complete outward

[104] See 18 U.S.C. 961–967 and 22 U.S.C. 441–457.

[105] Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

foreign manifest and all required shipper's export declaration have been filed with the district director: **[TDs 71–169, 74–284, 77–255, 84–193, 84–213, 87–1.]**

Albania
Bulgaria
Cambodia
China, People's Republic of
Cuba
Czechoslovakia
Estonia
German Democratic Republic (Soviet Zone of Germany and Soviet Zone sector of Berlin)
Hungary
Iran
Iraq
Laos
Latvia
Libya
Lithuania
Mongolian People's Republic
Nicaragua
North Korea
Polish People's Republic (including Danzig)
Rumania
South Yemen
Union of Soviet Socialist Republics
Viet Nam

Coastwise Procedure

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the U.S. embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is— **[BMIN/BN 388/41; MCL 15/42. TDs 50592, 50601, 50621, 50623, 50653, 50654, 50698, 50729, 50732, 50756, 50811, 51049. TD 54783, 69–266, 83–214.]**

(1) Owned by a citizen and is so documented under the laws of the U.S. as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR Subpart 67.03. **[TD 83–214.]**

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the district director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883). **[TD 79–160.]**

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $200 for each passenger so transported and landed (46 U.S.C. 289). **[TD 79–160.]**

(c) Any vessel of the U.S., whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the U.S. embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passengers for a foreign port, in ballast, or to transport certain articles in accordance with § 4.93. Cargo laden at a foreign port may be retained onboard during such movements. Furthermore, certain barges of U.S. or foreign flag may transport transferred merchandise between points in the U.S. embraced within the coastwise laws, excluding transportation between the continental U.S. and a noncontiguous point in the U.S. embraced within the coastwise laws, in accordance with § 4.81a. **[TDs 68–302, 69–266, 74–63.]**

(d) No vessel owned by a corporation which is a citizen of the U.S. under the Act of September 2, 1958 (46 U.S.C. 883–1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the U.S. to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901–923), which otherwise qualifies as a citizen of the U.S. under § 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation. **[TDs 54827, 69–266, 83–214.]**

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the U.S., shall have the right to engage in such trade if it thereafter has been sold or transferred foreign in whole or in part or placed under foreign registry, or, if of more than 500 gross tons, has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the U.S., its Territories (not including trust territories), or its possessions. However, no rebuilt vessel shall be deemed to have lost its coastwise privileges within the meaning of the above if rebuilt within the U.S., its Territories (not including trust territories), or its possessions under a contract executed before July 5, 1960, if the work of rebuilding commenced not later than 24 months after such date. **[TD 69–266.]**

(f) No foreign-built vessel owned and documented as a vessel of the U.S. prior to February 1, 1920, by a citizen nor one owned by the U.S. on June 5, 1920, and sold to and owned by a citizen, shall engage in the American fisheries but it is otherwise unlimited as to trade so long as it continues in such ownership (§ 22, Merchant Marine Act, of June 5, 1920; 46 U.S.C. 13). No foreign-built vessel which is

owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the U.S. on June 5, 1920, shall engage in the coastwise trade or the American fisheries. No foreign-built vessel which has been sold, leased, or chartered by the Secretary of Commerce to any citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership, lease, or charter (§ 9 of the Act of Sept. 7, 1916, as amended, 46 U.S.C. 808). A vessel engaged in taking out fishing parties for hire, unless it intends to proceed to a foreign port, is considered to be engaged in the coastwise trade and not the fisheries. **[TD 69-266.]**

(g) Certain vessels not documented under the laws of the U.S. which are acquired by or made available to the Secretary of Commerce may be documented under § 3 of the Act of August 9, 1954 (50 U.S.C. 198). Such vessels shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of § 3(c) of the said Act. **[TD 69-266.]**

(h) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture. (R.S. 4132, as amended, R.S. 4214, as amended, R.S. 4311, as amended, secs. 7, 8, 24 Stat. 81, as amended, secs. 2, 9, 39 Stat. 729, as amended, 730, as amended, secs. 22, 27, 41 Stat. 997, 999, as amended, 72 Stat. 1736; 46 U.S.C. 11, 13, 103, 251, 289, 319, 802, 808, 883, 883-1) **[TDs 69-266, 74-63, 83-214.]**

§ 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., it territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacoa). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on saling from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 289) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 289c that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provisions of Part 177, Customs Regulations (19 CFR Part 177). **[TDs 68-285, 69-166, 70-28, 73-319, 75-186, 85-109.]**

§ 4.80b Coastwise transportation of merchandise.

(a) *Effect of manufacturing or processing at intermediate port or place.*—A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is, at a foreign port or place, or at a port or place in a territory or possession of the U.S. not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

(b) *Request for ruling.*—Interested parties may request an advisory ruling from Headquarters, U.S. Customs Service, Attention: Carriers, Drawback and Bonds Division, as to whether a specific action taken or to be taken with respect to merchandise at the intermediate port or place will result in its becoming a new and different product for purposes of this section. The request shall be filed in accordance with the provisions of Part 177 of this chapter. **[TD 79-193.]**

§ 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or

laden only with domestic products or passengers being carried only between points in the U.S. shall be required to report arrival or to enter when coming into one port of the U.S. from any other such port, except as provided for in §§ 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the U.S. to any other such port except when transporting merchandise to a port in noncontinguous territory.[111] **[BMIN/CL 308/41; MCL 15/42. TDs 50643, 50794, 53888, 55876, 83-214.]**

(b) When the facts are as above stated except that the vessel is carrying bonded merchandise, the master shall report its arrival as provided for in § 4.2.

(c) [Reserved]

(d) The traveling Crew's Effects Declaration, Customs Form 1304, or Customs and Immigration Form I-418 with attached Customs Form 5129, referred to in § 4.85 (b), (c), and (e) shall be deposited with the district director upon arrival at each port in the U.S. and finally surrendered to the boarding officer or district director at the port where the vessel first departs directly for a foreign port. **[TD 71-169.]**

(e) Before any foreign vessel shall depart in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the U.S. for any other such port, the master shall apply to the district director for a permit to proceed by filing a General Declaration, Customs Form 1301, in duplicate. If a vessel is proceeding in ballast and therefore Cargo Declaration, Customs Form 1302, is omitted, the word "None" shall be inserted in item 17 of the General Declaration and the words "No merchandise on board" shall be inserted in item 13 of the General Declaration. However, articles to be transported in accordance with § 4.93 shall be manifested on Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration shall be filed with the district director. The required master's oath shall be executed on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)). When the district director grants the permit by making an appropriate endorsement on the General Declaration, (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported in accordance with § 4.93, shall be returned to the master. The traveling Crew's Effects Declaration Customs Form 1304 and all unused crewmembers' declarations on Customs Form 5129 shall be placed in a sealed envelope addressed to the Customs boarding officer at the next intended domestic port and returned to the master for delivery. The master shall execute a receipt for all unused crewmembers' declarations which are returned to him. Within 24 hours after arrival at the next U.S. port the master shall report his arrival to the district director. He shall make entry within 48 hours by filing with the district director the permit to proceed on General Declaration received at the previous port, a newly executed General Declaration, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration Customs Form 1303 in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The required master's oath shall be executed on The Master's Oath on Entry of Vessel in Foreign Trade (see § 4.63(a)). The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master shall be delivered by him to the boarding officer. **[TDs 53336, 53425, 53792, 68-302, 71-169, 74-284, 77-255.]**

(f) The master, licensed deck officer, or purser who enters or clears a vessel, or who obtains permission for a vessel to depart, when required under the provisions of this section or of §§ 4.82, 4.84, 4.85, 4.87, 4.89, or 4.91 of the regulations of this part, may appear in person at the customhouse for that purpose, or any required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. **[TDs 53775, 55876.]**

(g) In lieu of the procedures stated in §§ 4.85 and 4.87 and at the option of the owner or operator, unmanned nonself-propelled barges specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in the foreign trade, hereinafter referred to as LASH-type barges, may move under a simplified permit-to-proceed procedure as follows: **[TDs 74-63, 75-315.]**

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on Customs Form 1301 must be obtained. The required oath shall be executed on Customs Form 1300. A single permit to proceed may be for all the barges proceeding to the same port of unlading in the same tow. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit and a Customs Form 7512-C must be prepared for each permit. At the port of unlading of the barge, report of arrival and entry must be made within 24 hours to the appropriate Customs officer by presentation of the permit to proceed, manifests, Form 7512-C obtained at the preceding port, a new master's oath, and a new General Declaration (Customs Form 1301). If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained, the inward foreign manifests shall be attached to it, the master's oath shall be filed, a new Form 7512-C shall be prepared. **[TD 75-315.]**

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on Customs Form 1301 and a master's oath must be presented to the appropriate Customs officer. A single permit to proceed and master's oath may be presented for all the barges proceeding from the same port of lading in the same tow. Required shipper's export declarations for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. Where a complete manifest is not available at the port of lading, the permit to proceed must include a statement that a complete manifest and shipper's export declaration for each barge will be filed at the port where the barge will be taken aboard a barge-carrying vessel, and that port must be identified in the statement. At the next port, a report of arrival must be made within 24 hours and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior port, a newly executed General Declaration (Customs Form 1301), and a master's oath.

(3) When foreign LASH-type barges are proceeding between ports of the U.S. under paragraph (e) of this section,

[111] See § 4.84.

a single permit to proceed may be used for all the barges proceeding to the same port in the same tow.

(4) In lieu of the master of the towing vessel executing and delivering documents required under permit-to-proceed procedures (see § 4.81(f)) at the port where a LASH-type barge begins a coastwise movement, the master of the towing vessel may designate in writing the owner or operator of the barges as his representative with authority to execute and deliver such documents at the customhouse. The owner or operator of the barges may designate representatives to perform such functions at ports or places where permit-to-proceed documents must be delivered. Documents obtained from Customs officers at one place by such a representative may be forwarded by any suitable means to the representative who must present them to Customs officers at another place, the only requirement being that the forms are properly completed and are presented within the prescribed time periods. Moreover, instead of a written designation from each master of a towing vessel, a blanket designation in writing from the owner or operator of one or more towing vessels on behalf of masters of their towing vessels, designating the owner or operator of the barges to be the representative of the master for purposes of executing and delivering permit-to-proceed documents, is authorized.

(5) [Reserved]

(6) When a LASH-type barge is proceeding to a place in the U.S. that is not a port of entry, § 101.4 (a) and (b) of this chapter are applicable. No merchandise shall be unladen from a LASH-type barge until a permit or special license therefor is obtained in accordance with § 4.30 except that a single permit to unlade may be used for all barges that arrived at the port of unlading in the same tow. (R.S. 4132, as amended, R.S. 4311, as amended, R.S. 4367, R.S. 4368, sec. 27, 41 Stat. 999, as amended, secs. 433, 439, 442, 443, 444, 486, 46 Stat. 711, as amended, 712, as amended, 713, as amended, 725, as amended; 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486, 46 U.S.C. 11, 251, 313, 314, 883) **[TD 77-241.]**

§ 4.81a Certain barges carrying merchandise transferred from another barge.

(a) A LASH-type barge (as defined in § 4.81(g)) documented as a vessel of the U.S. but not qualified to engage in the coastwise trade or a LASH-type barge of a nation found to grant reciprocal privileges to U.S.-flag LASH-type barges may transport inward foreign and export cargo between points embraced within the coastwise laws of the U.S. after the merchandise has been transferred to it from another LASH-type barge owned or leased by the same owner or operator. This section is not applicable to transportation between the continental U.S. and noncontiguous States, districts, territories, and possessions embraced within the coastwise laws. The permit to proceed shall include a statement that the unqualified LASH-type barge is owned or leased by the owner or operator of the LASH-type barge from which the merchandise was transferred. **[TDs 74-63, 75-315.]**

(b) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section to LASH-type barges of the U.S.: **[TDs 74-292, 75-7, 78-492.]**

Federal Republic of Germany.
Netherlands.
Sweden.
Union of Soviet Socialist Republics. (Sec. 27, 41 Stat. 999, as amended; 46 U.S.C. 883)

§ 4.82 Touching at foreign port while in coastwise trade.

(a) A documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which, during a voyage between ports in the U.S., touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggage, or mail [113] shall obtain a permit to proceed or clearance at each port of lading in the U.S. for the foreign port or ports at which it is intended to touch. The Customs Form 1302-A (see § 4.63), shall show only the cargo for foreign destination. (See §§ 4.61 and 4.87.) **[TDs 77-255, 83-214, 84-193.]**

(b) The master shall also present to the district director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the U.S. It shall describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The district director shall certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry and manifest, Customs Form 7512, shall not be shown on the coastwise Cargo Declaration. **[TD 77-255.]**

(c) Upon arrival from the foreign port or ports at the subsequent port in the U.S., a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is properly operating under a document with Great Lakes license endorsement. The master shall present Cargo Declaration in accordance with § 4.7 and the certified copies of the coastwise Cargo Declaration, Customs Form 1302. **[TDs 50683, 77-255, 83-214.]**

(d) All merchandise on the vessel upon its arrival at the subsequent port in the U.S. is subject to such Customs examination and treatment as may be necessary to protect the revenue. Any article on board which is not identified to the satisfaction of the district director, by the coastwise Cargo Declaration, Customs Form 1302 or otherwise, as part of the coastwise cargo, shall be treated as imported merchandise.[113] (R.S. 2793, as amended, 3126, 3127, 4318, as amended; 19 U.S.C. 293, 294, 46 U.S.C. 123, 258) **[TD 77-255.]**

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[112] "Any vessel, on being duly registered in pursuance of the laws of the U.S., may engage in trade between one port in the U.S. and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers, and their baggage, and letters, and mails. All such vessels shall be furnished by the collectors of the ports at which they shall take in their cargoes in the U.S., with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in the warehouse; and the masters of all such vessels shall, on their arrival at any port of the U.S. from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed." (19 U.S.C. 293)

[113] "Any foreign merchandise taken in at one port of the U.S. to be conveyed in registered vessels to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage." (19 U.S.C. 294)

§ 4.83 Trade between U.S. ports on the Great Lakes and other ports of the U.S.

(a) If a vessel proceeding from or to a port of the U.S. on the Great Lakes to or from any other port of the U.S. via the St. Lawrence River is intended to touch at any foreign port and does so touch, it will be subject to the usual requirements for manifesting, clearing, report of arrival, entry, payment of fees for entry and clearance, and tonnage taxes. Vessels which are boarded on the St. Lawrence River by Canadian authorities for the purposes of inspecting the vessel and taking a passing report are not deemed to have touched at a foreign port, provided that no ship's stores are landed or taken aboard and no other business is transacted at the port or place of boarding. **[TDs 47455, 53336, 55119, 55394, 69–266.]**

(b) A vessel in the coastwise trade only, which is proceeding from a port of the U.S. on the Great Lakes via the Hudson River and otherwise than by sea, may operate under a document with a Great Lakes license endorsement and shall not be subject to the requirements for clearance, report of arrival, or entry. (R.S. 4197, as amended, R.S. 2793, as amended, R.S. 4318, as amended; 46 U.S.C. 91, 111, 123, 258.) **[TDs 55876, 83–214.]**

§ 4.84 Trade with noncontiguous territory.

(a) No foreign vessel shall depart from a port in noncontiguous territory of the U.S. for any other port in noncontiguous territory or for any port in any State or the District of Columbia, nor from any port in any State or the District of Columbia for any port in noncontiguous territory, until a clearance for the vessel has been granted. Such a clearance shall be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, except that the Customs Form 1378 shall be modified by striking out "to a foreign port" and substituting "to noncontiguous territory of the U.S." or "to the U.S.," as the case may be, unless the vessel is simultaneously engaged in one or more of the transactions listed in § 4.90(a) (4), (5), or (6) of the regulations of this part. In the latter case, clearance shall be granted only on Customs Form 1301; § 4.90(b) of the regulations of this part. When merchandise is laden on a foreign vessel in noncontiguous territory other than Puerto Rico, for transportation on that vessel to a port in any State, the District of Columbia, or noncontiguous territory, and when this transportation is not forbidden by the coastwise laws, the merchandise may be laden and shipped without shipper's export declarations. **[TDs 51209, 51912, 55541, 55876, 71–169.]**

(b) The master of every foreign vessel arriving at a port in any State or the District of Columbia or in noncontiguous territory of the U.S. from a port in noncontiguous territory to which the coastwise laws do not apply (e.g., Virgin Islands and American Samoa), or arriving at any port in noncontiguous territory to which the coastwise laws do not apply from any place embraced within the coastwise laws, shall report its arrival within 24 hours and make entry for the vessel within 48 hours after its arrival. **[TD 55876.]**

(c) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the U.S. (including Puerto Rico), or from Puerto Rico to any State or the District of Columbia or any other noncontiguous territory, shall not be permitted to depart without filing a complete manifest, when required by regulations of the Bureau of the Census (15 CFR Part 30), and all required shipper's export declarations, unless before the vessel departs an approved bond is filed for the timely production of the required documents, as specified in § 30.24 of those regulations (15 CFR 30.24). Requests for permission to depart may be written or oral and permission to depart shall be granted orally by the appropriate Customs officer. However, if the request is to depart prior to the filing of the required manifest and export declarations, permission shall not be granted unless the appropriate bond is on file. In the latter case, the Customs officer shall keep a simplified record of the necessary information in order to assure that the manifest and export declarations are filed within the required time period. The Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)), required at the time of clearance is not required to be taken to obtain permission to depart. **[TDs 55876, 77–255.]**

(d) Upon arrival of a vessel of the U.S. at a port in any State, the District of Columbia, or Puerto Rico from a port in noncontiguous territory other than Puerto Rico, the master shall report its arrival within 24 hours and shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in §§ 4.7 and 4.9 but shall not be required to make entry. If the vessel proceeds directly to another port in any State, the District of Columbia, or Puerto Rico, the master shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in § 4.85 but no permit to proceed on the General Customs Declaration, Customs Form 1301, shall be required for the purposes of this paragraph. No cargo shall be unladen from any such vessel until Cargo Declarations have been filed and a permit to unlade has been issued in accordance with the procedure specified in § 4.30. **[TDs 53336, 55876, 77–255.]**

(e) No vessel shall bring guano to the U.S. from a guano island appertaining to the U.S. (see 48 U.S.C. 1411) unless such a vessel is entitled to engage in the coastwide trade. **[TDs 54827, 55876.]**

(f) No vessel owned by a corporation which qualifies as a citizen under the Act of September 2, 1958 (46 U.S.C. 883–1) shall, while under demise or bareboat charter from such corporation, be granted clearance or permitted to depart in trade with noncontiguous territory. (Secs. 433, 435, 437, 46 Stat. 711, R.S. 4197, as amended, 4367, 4368, 27A, 72 Stat. 1736; 19 U.S.C. 1433, 1435, 1437, 46 U.S.C. 91, 313, 314, 883–1) **[TDs 55876, 69–266, 79–276.]**

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the U.S. other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the district director at the port of first entry.[115]

[115] " * * Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the U.S. other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to lading thereof." (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

No additional bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the district director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest).[116] The certified copy shall have a legend similar to the following endorsed on the General Declaration, Customs Form 1301: **[TDs 53648, 53792, 71-169, 83-214, 84-213.]**

Port Date

Certified to be a true copy of the original inward foreign manifest.

Signature and title

(b) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master shall present to the district director at such port of departure an application in triplicate on Customs Form 1301 for a permit to proceed to the next port. The required oath shall be executed on Customs Form 1300 (see § 4.63(e)). When a district director grants the permit on Customs Form 1301, the following legend shall be endorsed on the form: **[TDs 52038, 52965, 53425, 53648, 56174, 71-169.]**

Port Date

Permission is granted to proceed to the port named in item 6.

Signature and title

The duplicate shall be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) shall be returned to the master, together with the traveling manifest[116] and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact shall be indicated on Customs Form 1301 by inserting "To load only" in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, shall be placed in a sealed envelope addressed to the Customs boarding officer at the next port and given to the master for delivery.

(c) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master shall report arrival and make entry within 24 hours. To make such entry, he shall deliver to the district director the vessel's document, the permit to proceed (Customs Form 1301 endorsed in accordance with paragraph (b) of this section), the traveling manifest,[117] and the traveling Crew's Effects Declaration Customs Form 1304, together with the crewmembers' declarations received on departure from the previous port. The master shall also present an abstract manifest consisting of (1) a newly executed General Declaration Customs Form 1301, (2) a Cargo Declaration, Customs Form 1302, and a Passenger List, Customs and Immigration Form I-418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port. (3) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, (4) a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and (5) if applicable, the Cargo Declaration required by § 4.86. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and the following legend shall be placed in item 12 of the General Declaration: **[TDs 52965, 53425, 53648, 53792, 56174, 66-280, 71-169, 74-284, 77-255.]**

Vessel on an inward foreign voyage with residue cargo/passengers for _____. No cargo or passengers for discharge at this port.

The required oath shall be executed on Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(e)). The traveling manifest, together with a copy of the newly executed General Declaration, shall serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

(d) If preliminary entry is desired, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer, and preliminary entry shall be made in accordance with § 4.8. **[TDs 47959, 71-169.]**

(e) The traveling manifest shall be surrendered to the district director at the final domestic port of discharge of the cargo, except that if residue foreign cargo remains on board for discharge at a foreign port or ports, the traveling manifest shall be surrendered at the final port of departure from the U.S. However, it shall not be surrendered at the port from which the vessel departs for another U.S. port, via an intermediate foreign port, under § 4.89 if residue foreign cargo remains on board for discharge at a subsequent U.S. port. The traveling Crew's Effects Declaration shall be finally surrendered to the district director at any port from which the vessel will depart directly for a foreign port. (Secs. 439, 442, 443, 444, 623, 46 Stat. 712, as amended, 713, 759, as amended; 19 U.S.C. 1439, 1442, 1443, 1444, 1623) **[TDs 52965, 53425, 53648, 53792, 71-169.]**

§ 4.86 Intercoastal residue—cargo procedure; optional ports.

(a) When a vessel arrives at an Atlantic or Pacific coast port from a foreign port or ports with residue cargo for delivery at a port or ports on the opposite coast or on the Great Lakes, or where such arrival is at a port on the Great Lakes, with residue cargo for delivery at a port or ports on the Atlantic or Pacific coasts, or both, and the master, owner, or agent is unable at that time to designate the specific port or ports of discharge of that residue cargo, the Cargo Declaration, Customs Form 1302, filed on entry in accordance with § 4.7(b) shall show such cargo as destined for "optional

[116] "Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the U.S. with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board." (Tariff Act of 1930, sec. 443; 19 U.S.C. 1443)

"If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the collector at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500." (Tariff Act of 1930, sec. 445; 19 U.S.C. 1445)

[117] "Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of his first arrival, together with the certified copy of his manifest." (Tariff Act of 1930, sec. 444; 19 U.S.C. 1444)

ports, Atlantic coast," or "optional ports, Pacific coast," or "optional ports, Great Lakes coast," as the case may be. The traveling manifest shall be similarly noted. Upon arrival of the vessel at the first port on the next coast, the master, owner, or agent must designate the port or ports of discharge of residue cargo as required by § 431, Tariff Act of 1930. **[TDs 52965, 53848, 56174, 66–280, 77–255.]**

(b) For this purpose, the master shall furnish with the other papers required upon entry a Cargo Declaration, Customs Form 1302 in original only of inward foreign cargo remaining on board for discharge at optional ports on that coast, and the Cargo Declaration must designate the specific ports of intended discharge for that cargo. The traveling manifest shall be amended to agree with that Cargo Declaration so as to show the newly designated ports of discharge on that coast and shall be used to verify the abstract Cargo Declarations surrendered at subsequent ports on that coast. (Secs. 442, 443, 444, 46 Stat. 713; 19 U.S.C. 1442, 1443, 1444) **[TDs 56174, 77–255.]**

§ 4.87 Vessels proceeding foreign via domestic ports.

(a) Any foreign vessel or documented vessel with registry or, where appropriate, a Great Lakes license endorsement may proceed from port to port in the U.S. to lade cargo or passengers for foreign ports. **[MC 95/51. TDs 52038, 71–169, 77–255, 83–214.]**

(b) When applying for a clearance from the first and each succeeding port of lading, the master shall present to the district director a General Declaration, Customs Form 1301, in duplicate and a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The General Declaration shall clearly indicate all previous ports of lading. The required master's oath shall be executed on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63 (a)). **[TDs 52800, 54232, 71–169, 77–255, 84–193.]**

(c) Upon compliance with the applicable provisions of § 4.61, the district director shall grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the General Declaration, Customs Form 1301. One copy shall be returned to the master, together with the vessel's document if on deposit. The traveling Crew's Effects Declaration, Customs Form 1304, together with any unused crewmembers' declarations, shall be placed in a sealed envelope addressed to the Customs boarding officer at the next domestic port and returned to the master. **[TDs 53425, 54232, 71–169, 77–255.]**

(d) On arrival at the next and each succeeding domestic port, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting the vessel's document, the permit to proceed on the General Declaration, Customs Form 1301 received by him upon departure from the last port a Crew's Effects Declaration, Customs Form 1304, in duplicate listing all unentered articles acquired abroad by officers and crew of the vessel which are still retained on board, and a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining aboard. The master shall also execute a General Declaration. The required master's oath shall be on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(e)). The traveling Crew's Effects Declaration, together with any unused crewmembers' declarations returned to the master at the prior port, shall be delivered by him to the district director. **[TDs 51912, 52038, 53425, 53792, 54232, 71–169, 77–255.]**

(e) Clearance shall be granted at the final port of departure from the U.S. in accordance with § 4.61. **[TDs 52800, 54232, 71–169, 77–255.]**

(f) If a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), and all required shipper's export declarations are not available for filing before departure of a vessel from any port, clearance on the General Declaration, Customs Form 1301 (Customs Form 1378 at the last port) may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c). **[TDs 55876, 71–169, 77–255, 84–193.]**

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel shall deliver to the district director at that port within 4 business days after the vessel's clearance [118] a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), an oath on Customs Form 1300, and the export declarations to cover the cargo laden for export at that port. **[TDs 52800, 54232, 55876, 71–169, 77–255, 84–193.]**

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which arrives at a port in the U.S. from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a bond on Customs Forms 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the district director at the port of first entry.[119] **[TDs 83–214, 84–213.]**

(b) The district director shall designate the items of such merchandise, if any, for which foreign landing certificates [120] will be required. **[TDs 30681, 35319, 37246, 41948, 47959, 53648.]**

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board may be declared on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), by the insertion of the following statement: **[TDs 52965, 55645, 77–255, 84–193.]**

All cargo declared on entry in this port as cargo for discharge at foreign ports and so shown on the Cargo Declaration filed upon entry has been and is retained on board.

If any such cargo has been landed, the Cargo Declaration shall describe each item of the cargo from a foreign port which has been retained on board (see § 4.63(a)).

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[118] See footnotes 106 and 107. (Secs. 433, 435, 437, 439, 442, 443, 444, 46 Stat. 711, 712, as amended, 713, R.S. 4197, as amended, 4367, 4368; 19 U.S.C. 1433, 1435, 1437, 1439, 1442, 1443, 1444, 46 U.S.C. 91, 313, 314)

[119] "Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. * * *" (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

[120] "The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the U.S., or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue." (Tariff Act of 1930, sec. 622; 19 U.S.C. 1622)

(d) If the vessel is proceeding to other ports in the U.S. with foreign residue cargo on board manifested for discharge at a foreign port or ports, a procedure like that set forth in § 4.85 shall be followed with respect thereto. (Secs. 442, 622, 623, 46 Stat. 713, 759, as amended; 19 U.S.C. 1442, 1622, 1623)

§ 4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.

(a) A vessel proceeding from port to port in the U.S. in accordance with §§ 4.85, 4.86, or 4.87 may touch at an intermediate foreign port or ports to lade or discharge cargo or pagers. In such a case the vessel shall obtain clearance from the last port of departure in the U.S. before proceeding to the intermediate foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Customs Form 1302–A (see § 4.63), shall show the cargo for such foreign destination in the manner provided in § 4.88(c). **[TDs 55645, 77–255, 84–193.]**

(b) The master shall also present to the district director the Cargo Declaration or Cargo Declarations required by §§ 4.85, 4.86, or 4.87, and obtain a permit to proceed on the General Declaration, Customs Form 1301, to the next port in the U.S. at which the vessel will touch. **[TD 77–255.]**

(c) Upon arrival at the next port in the U.S. after touching at a foreign port or ports a report of arrival and entry shall be made. The Cargo Declaration, Customs Form 1302, filed at time of entry shall list the cargo laden at the intermediate foreign port or ports. **[TD 77–255.]**

(d) The master shall also present to the district director the permit to proceed on the General Declaration, Customs Form 1301, and the Cargo Declaration from the last previous port in the U.S. as provided for in §§ 4.85, 4.86, or 4.87. **[TD 77–255.]**

§ 4.90 Simultaneous vessel transactions.

(a) A vessel may proceed from port to port in the U.S. for the purpose of engaging in two or more of the following transactions simultaneously,[121] subject to the limitations hereafter mentioned in this section and the conditions stated in the sections indicated in the list:

(1) Coastwise trade (§ 4.80).

(2) Touching at a foreign port while in coastwise trade (§ 4.82).

(3) Trade with noncontiguous territory of the U.S. (§ 4.84).

(4) Carriage of residue cargo or passengers from foreign ports (§§ 4.85–4.86).

(5) Carriage of cargo or passengers laden for foreign ports (§ 4.87).

(6) Carriage of residue cargo for foreign ports (§ 4.88).

(b) When a vessel is engaged simultaneously in two or more such transactions, the master shall indicate each type of transaction in which the vessel is engaged in his application for clearance on Customs Form 1301. The master shall conform simultaneously to all requirements of these regulations with respect to each transaction in which the vessel is engaged. **[TD 71–169.]**

(c) A foreign vessel is not authorized by this section to engage in the coastwise trade, including trade with noncontiguous territory embraced within the coastwise laws.

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry or, where appropriate, a Great Lakes license endorsement. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so. **[TD 83–214.]**

(e) When a single entry bond, containing the bond conditions set forth in § 113.64, relating to international carriers, is filed at any port and it is applicable to the current voyage of the vessel, it shall cover all other transactions engaged in on that voyage of a like nature and another bond containing the international carrier bond conditions need not be filed. [84–213]

§ 4.91 Diversion of vessel; transshipment of cargo.

(a) If any vessel granted a permit to proceed from one port in the U.S. for another such port as provided for in §§ 4.81(e), 4.85, 4.87, or 4.88, is, while en route, diverted to a port in the U.S. other than the one specified in the permit to proceed (Customs Form 1301),[122] the owner or agent of the vessel immediately shall give notice of the diversion to the district director who granted the permit, informing him of the new destination of the vessel and requesting him to notify the district director at the latter port. Such notification by the district director shall constitute an amendment of the permit previously granted, shall authorize the vessel to proceed to the new destination, and shall be filed by the district director at the latter port with the Form 1301 submitted on entry of vessel. **[BMIN/CL 12, 1135. TD 71–169.]**

(b) If any vessel cleared from a port in the U.S. for a foreign port as provided for in § 4.60 is diverted, while en route, to a port in the U.S. other than that from which it was cleared, the owner or agent of the vessel immediately shall give notice of the diversion to the district director who granted the clearance, informing him of the new destination of the vessel and requesting him to notify the district director at the latter port. Such notification by the district director shall constitute a permit to proceed coastwise, and shall authorize the vessel to proceed to the new destination. On arrival at the new destination, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting (1) the vessel's document, (2) the foreign clearance on Form 1378 granted by the district director at the port of departure, (3) a certificate that when the vessel was cleared from the last previous port in the U.S. there were on board cargo and/or passengers for the ports named in the foreign clearance certificate only and that additional cargo or passengers (have) (have not) been taken on board or discharged since such clearance was granted (specifying the particulars if any passengers or cargo were taken on board or discharged), (4) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board, and (5) a Ship's Stores Declaration in duplicate of the stores on board. **[TDs 52258, 52954, 54232, 71–169.]**

(c) In a case of necessity, a district director may grant an application on Customs Form 3171 of the owner or agent of an established line for permission to transship [123] all cargo

[121] For the purposes of this part, an inward foreign voyage is completed at the port of final discharge of inbound passengers or cargo, and an outward foreign voyage begins at the port where cargo or passengers are first laden for carriage to a foreign destination.

[122] See § 4.33.

[123] See § 4.31.

and passengers from one vessel of the U.S. to another such vessel under Customs supervision, if the first vessel is transporting residue cargo for domestic or foreign ports or is on an outward foreign voyage or a voyage to noncontiguous territory of the U.S., and is following the procedure prescribed in §§ 4.85, 4.87, or 4.88. When inward foreign cargo or passengers are so transshipped to another vessel, a separate traveling manifest (Cargo Declaration, Customs Form 1302, or Passenger List, Customs and Immigration Form I–418) shall be used for the transshipped cargo or passengers, whether or not the forwarding vessel is also carrying other residue cargo or passengers. An appropriate cross-reference shall be made on the separate traveling manifest to show whether any other traveling manifest is being carried forward on the same vessel. **[TDs 53648, 71–169, 77–255.]**

§ 4.92 Towing.

The prohibition against the use of foreign vessels in towing operations [134] shall be enforced with respect to such operations between any points embraced within the coastwise laws.

§ 4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

(a) Vessels of the U.S. prohibited from engaging in the coastwise trade and vessels of nations found to grant reciprocal privileges to vessels of the U.S. may transport the following articles between points embraced within the coastwise laws of the U.S.: **[TDs 66–176, 68–302, 68–303, 71–169.]**

(1) Empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and empty instruments of international traffic exempted from application of the Customs laws by the Secretary of the Treasury pursuant to the provisions of § 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade. **[TD 74–63.]**

(2) Stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.[135]

(b)(1) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section for empty cargo vans, empty lift vans, and empty shipping tanks to vessels of the U.S.: **[TDs 66–201, 66–224, 67–18, 67–60, 67–86, 67–104, 67–124, 67–215, 67–255, 68–116, 68–302, 68–303, 69–185, 70–74, 70–172, 70–183, 70–185, 70–205, 71–242, 71–254, 72–26, 73–19, 73–122, 74–28, 74–205, 74–292, 75–109, 75–122, 76–205, 76–278, 77–221, 77–255, 79–228, 80–152, 81–14, 81–84, 81–256, 83–17, 83–78, 86–1, 86–69, 86–176, 87–16.]**

Australia.
Austria.
Bahamas, The.
Belgium.
Bermuda.
Brazil.
Canada.
Chile.
China.*
Colombia.
Cyprus.
Denmark.
Ecuador.
Finland.
France.
Germany, Federal Republic of.
Greece.
Guatemala.
Iceland.
Iran.
Ireland.
Israel.
Italy.
Ivory Coast.
Japan.
Kuwait.
Liberia.

[134] "It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the U.S. within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to § 288 of this title, to tow any vessel other than a vessel of foreign registry, or a vessel in distress, from any port or place in the U.S., its Territories or possessions, embraced within the coastwise laws of the U.S., to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbor of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the U.S. for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit." (46 U.S.C. 316(a)) **[TD 68–302.]**

"Any foreign railroad company or corporation, whose road enters the U.S. by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the U.S. entering ports of the U.S. from ports in the same foreign country: *Provided,* That except as authorized by § 883 of this title, such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the U.S., its Territories or possessions, embraced within the coastwise laws of the U.S., to any other port or place within the same." (46 U.S.C. 316(c))

"Every undocumented vessel, operated in whole or in part by machinery owned in the U.S. and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. * * *" (46 U.S.C. 288) (R.S. 4370 as amended; 46 U.S.C. 316)

[135] "* * * *Provided further,* That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the U.S., this section shall not apply to the transportation by vessels of the U.S. not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of § 322 Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transported vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade." (46 U.S.C. 883). **[TD 68–302]**

Mexico.
Netherlands.
Netherlands Antilles.
Norway.
Philippines.
Polish People's Republic.
Portugal.
Republic of Korea.
Republic of Panama.
Republic of Singapore.
Republic of Zaire.
South Africa.
Spain.
Sweden.
Taiwan.
Union of Soviet Socialist Republics.
United Kingdom (including Hong Kong).
Yugoslavia, Socialist Federal Republic of.

*See also Taiwan

(2) The following nations have been found to extend similar reciprocal privileges in respect to the other articles mentioned in paragraph (a) of this section: **[TDs 69-39, 69-58, 69-59, 69-72, 69-127, 69-178, 69-185, 69-203, 70-172, 70-185, 70-205, 70-217, 71-242, 71-254, 72-26, 73-19, 73-122, 74-292, 75-109, 76-205, 76-278, 77-221, 77-225, 79-228, 80-152, 80-229, 81-14, 81-84, 81-256, 83-17, 83-78, 86-1, 86-69, 87-16.]**
Australia.
Austria.
Bahamas, The.
Belgium.
Bermuda.
Brazil.
Chile.
Colombia.
Denmark.
Federal Republic of Germany.
Finland.
France.
Greece.
Guatemala.
Iceland.
Ireland.
Israel.
Italy.
Ivory Coast.
Kuwait.
Liberia.
Mexico.
Netherlands.
Netherlands Antilles.
Norway.
Polish People's Republic.
Portugal.
Republic of Korea.
Republic of Panama.
Republic of Singapore.
Republic of Zaire.
South Africa.
Spain.
Sweden.
Taiwan.
Union of Soviet Socialist Republics.
United Kingdom (including Hong Kong).

(c) Any Cargo Declaration, Customs Form 1302, required to be filed under this part by any foreign vessel shall describe any article mentioned in paragraph (a) of this section laden aboard and transported from one U.S. port to another, giving its identifying number or symbol, if any, or such other identifying data as may be appropriate, the names of the shipper and consignee, and the destination. The Cargo Declaration shall also include a statement (1) that the articles specified in paragraph (a)(1) of this section are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; or (2) that the stevedoring equipment and material specified in paragraph (a)(2) of this section is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for his use in handling his cargo in foreign trade. If the district director at the port of lading is satisfied that there will be sufficient control over the coastwise transportation of the article without identifying it by number or symbol or such other identifying data on the Cargo Declaration, he may permit the use of a Cargo Declaration that does not include such information provided the Cargo Declaration includes a statement, that the district director at the port of unlading will be presented with a statement at the time of entry of the vessel that will list the identifying number or symbol or other appropriate identifying data for the article to be unladen at that port. Applicable penalties under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed for violation of this paragraph. (Sec. 27, 41 Stat. 999, as amended, 80 Stat. 379, sec. 27, sec. 14, 67 Stat. 516, 82 Stat. 700; 5 U.S.C. 301, 19 U.S.C. 66, 1322(a), 1624, 46 U.S.C. 883) **[TDs 68-302, 71-169, 77-38, 77-255.]**

Note: For FR citations affection § 4.93 see List of CFR Sections Affected.

General

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. A vessel which is so documented and which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it has not visited a hovering vessel. **[TDs 69-266, 83-214.]**

(b) A cruising license may be issued to a yacht of a foreign country only if it has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the U.S. are allowed to arrive at and depart from ports in such foreign country and to cruise in the waters of such ports without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage, taxes, or charge for cruising licenses. It has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the U.S. are granted such privileges in the following countries: **[TDs 72-255, 74-53, 74-140, 74-248, 75-198, 77-271, 84-176, 84-215, 85-87, 86-54, 86-123, 88-10.]**

Argentina.
Austria.
Australia.
Bahama Islands.
Belgium.
Bermuda.
Canada.
Denmark.
France.
Germany, Federal Republic of
Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher-Nevis-Anguilla Islands and the British Islands).
Greece.
Honduras.
Ireland.
Jamaica.
Liberia.
Netherlands.
New Zealand.
Norway.
Sweden.
Turkey.

(c) In order to obtain a cruising license for a yacht of any country listed in paragraph (b) of this section, there shall be filed with the district director of Customs an application therefor executed by either the yacht owner or the master which shall set forth the owner's name and address and identify the vessel by flag, rig, name, and such other matters as are usually descriptive of a vessel. The application shall also include a description of the waters in which the yacht will cruise, and a statement of the probable time it will remain in such waters. Upon approval of the application, the district director will issue a cruising license in the form prescribed by paragraph (d) of this section permitting the yacht, for a stated period not to exceed one year to arrive and depart from the U.S. and to cruise in specified waters of the U.S. without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. The license shall be granted subject to the condition that the vessel shall not engage in trade or violate the laws of the U.S. in any respect. The master shall comply with § 433 of the Tariff Act of 1930 upon the vessel's arrival at every port or place within the U.S. **[TD 83-216.]**

(d) Cruising licenses shall be in the following form:

License To Cruise in the Waters of the U.S.

To District Directors of Customs:

For a period of _____ from_____ (Date) the_____ (Flag) _ (Rig) yacht _____ (Name) belonging to _____ of (Owner's name) _____ (Address) shall be permitted to arrive at and depart from the U.S. and to cruise in the waters of the Customs district of

_____

(Name of district or districts)

without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money.

This license is granted subject to the condition that the yacht named herein shall not engage in trade or violate the laws of the U.S. in any respect. Upon arrival at each port or place in the U.S., the master shall report the fact of arrival to the Customs officer at the nearest customhouse. Such report shall be made within 24 hours, exclusive of any day on which the customhouse is not open for marine business.

Issued this ___ day of _____, 19___

_____

(District Director of Customs)

Warning: This vessel is dutiable:

(1) If owned by a resident of the U.S. (including Puerto Rico), or brought into the U.S. (including Puerto Rico), for sale or charter to a resident thereof, or

(2) If brought into the U.S. (including Puerto Rico) by a nonresident free of duty as part of personal effects and sold or chartered within one year from date of entry.

Any offer to sell or charter (for example, a listing with yacht brokers or agents) is considered evidence that the vessel was brought in for sale or charter to a resident or, if made within one year of entry of a vessel brought in free of duty as personal effects, that the vessel no longer is for the personal use of the non-resident.

If the vessel is sold or chartered, or offered for sale or charter, in the circumstances described, without the owner first having filed a consumption entry and having paid duty, the vessel may be subject to seizure or to a monetary claim equal to the value of the vessel. See Chapter 89, Additional U.S. Note 1, HTSUS, and subheadings 8903.10, 8903.91, 8903.92, 8903.99.10, 8903.99.20, and 8903.99.90, HTSUS. **[TDs 83-216, 89-1.]**

(e) A foreign-flag yacht which is not in possession of a cruising license shall be required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the U.S. (Secs. 433, 434, 435, 441, 46 Stat. 711, as amended, 712, as amended, R.S. 4197 as amended, sec. 5, 35 Stat. 425, as amended, sec. 4, 28 Stat. 625, R.S. 4367, 4368; 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 107, 313, 314.) (Sec. 3, 23 Stat. 119, as amended, sec. 5, 35 Stat. 425, as amended (5 U.S.C. 301, 46 U.S.C. 3, 104))

§ 4.95 Records of entry and clearance of vessels.

Permanent records shall be prepared at each customhouse of all entries of vessels on Customs Form 1400 and of all clearances and permits to proceed on Customs Form 1401. Whenever a vessel is diverted, as provided for in § 4.91 (a) or (b), Customs Form 1401 shall be amended to show the new destination. **[MCLs 8/42; 22/42 FACLs 78, Supp. 2/42; 84, Supp. 2/42. TDs 50617, 52258, 52583, 52608, 52681, 52958, 53336, 54421.] These records shall be open to public inspection. [TD 82-224.]**

§ 4.96 Fisheries.

(a) As used in this section:

(1) The term "convention vessel" means a Canadian fishing vessel which, at the time of its arrival in the U.S., is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the U.S. and Canada signed at Ottawa Canada, on March 24, 1950 (T.D. 52862);

(2) The term "nonconvention fishing vessel" means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the U.S. and

(i) Which is documented under the laws of a foreign country,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the U.S., or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the U.S.;

(3) The term "nonconvention cargo vessel" means any vessel which is not employed in fishing at the time of its arrival in the U.S., but which is engaged in whole or in part in the transportation of fish or fish products [1][2] and

(i) Which is documented under the laws of a foreign country, or,

(ii) Which is undocumented and owned by a person other than a citizen of the U.S.;

(4) The term "treaty vessel" means a Canadian fishing vessel which at the time of its arrival in the U.S. is engaged in the albacore tuna fishery and which is therefore entitled to the privileges provided for by the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, entered into force at Ottawa, Canada, on July 29, 1981 (T.D. 81-227); and

(5) The term "fishing" means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the U.S. by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

(b) Except as otherwise provided by treaty or convention to which the U.S. is a party (see paragraphs (d) and (g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the U.S. its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in U.S. territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the U.S. to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. "Fisheries" includes the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells or marine vegetation at any place within the territorial waters of the U.S. or the fishery conservation zone established by the 16 U.S.C. 1811 **[TD 83-214.]**

(d) A convention vessel may come into a port of entry on the Pacific coast of the U.S., including Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the U.S. as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the U.S.

(e) A nonconvention fishing vessel, other than a treaty vessel, may come into a port of entry in the U.S. or, if granted permission under § 101.4(b) of this chapter, into a place other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the U.S. as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the U.S.

(f) A nonconvention cargo vessel, although not prohibited by law from coming into the U.S., shall not be permitted to land in the U.S. its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the district director that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the district director which establishes the place of lading to his satisfaction.

(g) A treaty vessel may come into a port or place of the U.S. named in Annex B of the Treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges to land its catch of albacore tuna, or to secure fuel, supplies, equipment and repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A treaty vessel which comes into the U.S. as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the U.S.

(h) A convention vessel, a nonconvention fishing vessel, a nonconvention cargo vessel, or a treaty vessel, which arrives in the U.S. in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the U.S., supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the district director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the district director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent, upon compliance with normal Customs procedures, a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska; a foreign cargo vessel arriving in distress from landing its cargo of fish taken on board at any place not on the high seas; or a treaty vessel arriving in distress from landing its catch of albacore tuna at a port

[1][2] * * * Except as otherwise provided by treaty or convention to which the U.S. is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the U.S. its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products." (46 U.S.C. 251)

of entry on the Pacific coast, including Alaska. **[TDs 51049, 52880, 53336, 69–266, 77–241, 82–144, 83–214.]**

§ 4.97 Salvage vessels.

(a) Only a vessel of the U.S., a numbered motorboat owned by a citizen, or a vessel operating within the purview of paragraph (d) or (e) of this section, shall engage in any salvage operation in territorial waters of the U.S. unless an application addressed to the Commissioner of Customs to use another specified vessel in a completely described operation has been granted.[133] **[TD 69–266.]**

(b) Upon receipt of such an application, the Commissioner of Customs will cause an investigation to be made immediately to determine whether a suitable vessel of the U.S. or a suitable numbered motorboat owned by a citizen is available for the operation. If he finds that no such vessel is available and that the facts otherwise warrant favorable action, he will grant the application.

(c) If the application is granted, the applicant shall make a full report of the operation as soon as possible to the district director at the port nearest the place where the operation was conducted.

(d) A Canadian vessel may engage in salvage operations on any vessel in any territorial waters of the U.S. in which Canadian vessels are permitted to conduct such operations by article II of the treaty between the U.S. and Great Britain signed on May 18, 1908,[134] or by § 725, title 46, United States Code.[135] If any such vessel engages in a salvage operation in territorial waters of the U.S., the owner or master of the vessel shall make a full report of the operation as soon as possible to the district director at the port nearest the place where the operation was conducted.

(e) A Mexican vessel may engage in a salvage operation on a Mexican vessel in any territorial waters of the U.S. in which Mexican vessels are permitted to conduct such operations by the treaty between the U.S. and Mexico signed on June 13, 1935.[136]

§ 4.98 Navigation fees.

(a)(1) The Customs Service shall publish a General Notice in the ***Federal Register*** and ***Customs Bulletin*** revised schedule of navigation fees for the following services:

Fee No. and description of services

1 Entry of vessel, including American, from foreign port:
  (a) Less than 100 net tons.
  (b) 100 net tons and over.
2 Clearance of vessel, including American, to foreign port:
  (a) Less 100 net tons.
  (b) 100 net tons or over.
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.
5 Receiving post entry.
6 Reserved.
7 Certifying payment of tonnage tax for foreign vessels only.
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect. **[TDs 80–286, 82–224, 84–149.]**

(2) The fees shall be calculated in accordance with and be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS–9.

(3) The party requesting a vessel service described in paragraph (a)(1) of this section for which reimbursable overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and § 24.16 of this chapter shall pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

(4) The revised fee schedule shall be made available to the public in Customs offices.

(5) The respective fees shall be designated in correspondence and reports by the applicable fee number. **[BMIN/BMs 23/39, 307/40, 363/41, 439/42, BMIN/CLS 119/36, 125/36. TDs 49468, 53385, 55893, 56251, 56340, 69–266, 80–25, 84–149.]**

(b) Fee 1 shall be collected at the first port of entry only. It shall not be collected from a vessel entering directly from a port in noncontiguous territory of the U.S. nor from one entering at a port on a northern, northeastern, or northwestern frontier otherwise than by sea. **[TD 69–266.]**

(c) Fee 2 shall be collected at the final port of departure from the U.S. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly for a port in noncontiguous territory of the U.S. nor from one clearing from a port on the northern, northeastern, or northwestern frontier otherwise

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[133] "No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the U.S., in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the U.S. on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of § 725 of this title: *Provided, however,* That if, on investigation, the Secretary of the Treasury is satisfied that no suitable vessel wholly owned by a person who is a citizen of the U.S. and documented under the laws of the U.S. or numbered pursuant to § 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use." (46 U.S.C. 316(d))

"Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by Article II of the treaty between the U.S. and Great Britain 'concerning reciprocal rights for U.S. and Canada in the conveyance of prisoners and wrecking and salvage' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the U.S. and Mexico 'to facilitate assistance to and salvage of vessels in territorial waters,' signed at Mexico City, June 13, 1935 (49 Stat. 3359)." (46 U.S.C. 316(e))

[134] "The High Contracting Parties agree that vessels and wrecking appliances, either from the U.S. or from the Dominion of Canada, may salve any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste. Marie, and the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.

[135] "Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the U.S. contiguous to the Dominion of Canada.

[136] "The High Contracting Parties agree that vessels and rescue apparatus, public or private, of either country, may aid or assist vessels of their own nationality, including the passengers and crews thereof, which may be disabled or in distress on the shores or within the territorial waters of the other country within a radius of seven hundred and twenty nautical miles of the intersection of the International Boundary Line and the coast of the Pacific Ocean, or within a radius of two hundred nautical miles of the intersection of the International Boundary Line and the coast of the Gulf of Mexico." (49 Stat. 3360) (R.S. 4370, as amended; 46 U.S.C. 316) [28 F.R. 1, Dec. 31, 1963, as amended by T.D. 69–266, 34 F.R. 20423, Dec. 31, 1969]

"It is further agreed that such reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto, and that nothing in the Customs, Coasting or other laws or regulations of either country shall restrict in any manner the salving operations of such vessels or wrecking appliances.

"Vessels from either country employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place." (35 Stat. 2036)

"This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and Canal: * * *." (46 U.S.C. 725)

The waters of Lake Michigan are not contiguous to the Dominion of Canada within the meaning of this statute.

than by sea. It shall be collected only upon the first clearance each year of a vessel making regular daily trips between a port of the U.S. and a port in Canada wholly upon interior waters not navigable to the ocean. **[TD 69-266.]**

(d) Fee 3 shall be collected for granting a permit to a foreign vessel to proceed to another Customs district, but not for a permit to proceed to a port in the same district. It shall be collected from a foreign vessel clearing directly for a port in noncontiguous territory of the U.S. outside its Customs territory. This fee shall not be collected in the case of a foreign vessel proceeding on a voyage by sea from one district in the U.S. to another such district via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions. **[TDs 51912, 69-266.]**

(e) Fee 4 shall be collected for receiving the manifest of a foreign vessel arriving from another Customs district, but not arriving from a port in the same district. It shall be collected from a foreign vessel entering directly from a port in noncontiguous territory of the U.S. outside its Customs territory. This fee shall not be collected in the case of a foreign vessel which arrives in one district in the U.S. from another such district on a voyage by sea via a foreign port. Only one fee shall be collected in the case of simultaneous vessel transactions. **[TDs 51912, 69-266.]**

(e-1) Fee 5 shall be collected from a foreign or American vessel at each port where the vessel is required to file a post entry in accordance with the provisions of § 4.12(a)(3). An original post entry may be supplemented by additional post entries in instances where items were omitted from the original post entry. A separate fee shall be collected for each supplemental post entry made to the original post entry. **[TD 74-194.]**

(f) Reserved. **[TDs 52025, 69-266, 82-224.]**

(g) Fee 7 shall be collected from foreign vessels only. **[TDs 53050, 53336, 69-266.]**

(h) Fee 8 shall be collected for each copy of any official document, whether certified or not, furnished to any person other than a Government officer. (Sec. 501, 65 Stat. 290; 92 Stat. 888 (31 U.S.C. 483a, Pub. L. 95-410)) **[TDs 52155, 69-266.]**

(i) Vessels, whether private or commercial, and passengers arriving in the customs territory of the U.S. aboard commercial vessels, may be subject to the payment of fees for services provided them as set forth in § 24.22 of this chapter. **[TD 86-109.]**

(j) The loading or unloading of merchandise or passengers from a commercial vessel at a U.S. port may cause the harbor maintenance fee set forth in § 24.24 of this chapter to be assessed. **[TD 87-44.]**

§ 4.99 Forms: Substitution.

(a) Customs forms 1300, 1301, 1302, 1302-A, 1303, and 1304 printed by private parties or foreign governments shall be accepted provided the forms so printed—

(1) Conform to the official Customs forms in wording arrangement, style, size of type, and paper specifications;

(2) Conform to the official Customs forms in size, except that:

(i) Each form may be printed on metric A4 size paper, 210 by 297 millimeters (approximately 8¼ by 11 ⅔ inches).

(ii) The vertical format of Customs forms 1300, 1301, 1302-A, 1303, and 1304 may be increased in size up to a maximum of 14 inches.

(iii) Customs form 1302 may be reduced in size to not less than either 8½ by 11 inches or 210 by 297 millimeters (metric A4 size). If Customs form 1302 is reduced in size, the size of type used may be reduced proportionately.

(b) If instructions are printed on the reverse side of the official Customs form, the instructions may be omitted from the privately printed forms, but the instructions shall be followed.

(c) The district director, in his discretion, may accept a computer printout instead of Customs form 1302 for use at a specific port. However, to insure that computer printouts may be used at all ports, the private party or foreign government first must obtain specific approval from headquarters, U.S. Customs Service.

(d) Forms which do not comply with the requirements of this section are not acceptable without the specific approval of the Commissioner of Customs. **[TD 79-255.]**

§ 4.100 Licensing of vessels of less than 30 net tons.

(a) The application for a license to import merchandise in a vessel of less than 30 net tons in accordance with § 6, Anti-Smuggling Act of August 5, 1935, shall be addressed to the Secretary of the Treasury and delivered to the district director of the district in which are located the ports where foreign merchandise is to be imported in such vessel. **[TD 72-211.]**

(b) The application shall contain the following information:

(1) Name of the vessel, rig, motive power, and home port.

(2) Name and address of the owner.

(3) Name and address of the master.

(4) Net tonnage of the vessel.

(5) Kind of merchandise to be imported.

(6) Country or countries of exportation.

(7) Ports of the U.S. where the merchandise will be imported.

(8) Whether the vessel will be used to transport and import merchandise from a hovering vessel.

(9) Kind of document under which the vessel is operating.

(c) If the district director finds that the applicant is a reputable person and that the revenue would not be jeopardized by the issuance of a license, he may issue the license for a period not to exceed 12 months, incorporating therein any special conditions he believes to be necessary or desirable, and deliver it to the licensee.

(d) The master or owner shall keep the license on board the vessel at all times and exhibit it upon demand of any duly authorized officer of the U.S. This license is personal to the licensee and is not transferable.

(e) The Secretary of the Treasury or the district director in whose office the license was issued may revoke the license if any of its terms have been willfully or intentionally violated or for any other cause which may be considered prejudicial to the revenue or otherwise against the interest of the U.S. (Sec. 6, 49 Stat. 519; 19 U.S.C. 1706)

§ 4.101 Prohibitions against Customs officers and employees.

No Customs officer or employee shall: **[TD 78-394.]**

(a) Own, in whole or in part, any vessel except a yacht or other pleasure boat;

(b) Act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the vessel; or

(c) Import or be concerned directly or indirectly in the importation of any merchandise for sale into the U.S.

PART 6—AIR COMMERCE REGULATIONS

Part 6 deleted. Replaced by T.D. 88–12, as Part 122, Air Commerce Regulations.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION [1]

Sec.

7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.
7.8 Insular possessions of the U.S. other than Puerto Rico.
7.11 Guantanamo Bay Naval Station.

Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States unless otherwise noted.

Source: 28 FR 14636, Dec. 31, 1963, unless otherwise noted.

§ 7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.

(a) When spirits and wines are withdrawn from a bonded manufacturing warehouse for shipment in bond to Puerto Rico pursuant to § 311, Tariff Act of 1930, as amended,[2] the warehouse withdrawal shall contain on the face thereof a statement of the kind and quantity of all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines. The duty assessed on the imported merchandise and containers so used, and their classification and value, shall be shown on the withdrawal in accordance with § 144.41 of this chapter, if no imported merchandise or containers have been used, the warehouse withdrawal shall bear an endorsement to that effect. (See §§ 191.85 and 191.86 of this chapter.) **[TDs 48461, 50501, 73-175, 83-212.]**

(b) The spirits and wines shall be forwarded in accordance with the general provisions of the regulations governing the transportation of merchandise in bond, Part 18 of this chapter. **[TD 48461.]**

(c) A regular entry shall be made for all foreign-grown coffee shipped to Puerto Rico from the U.S., but special Customs invoices shall not be required for such shipments.[3] **[TD 54056.]**

[1] "All laws affecting imports of articles goods, wages and merchandise from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the U.S. or the District of Columbia." (33 Stat. 843; 19 U.S.C. 126)

The customs administration of the said Canal Zone is under the jurisdiction of the Governor of the Panama Canal. (T.D.'s 26163, 28815, 30254, 30448, 39402, C. D. 530)

For the treaty between the U.S. and the Republic of Panama see 33 Stat. 2234.

[2] " * * * Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the U.S. shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

[3] Section 319, Tariff Act of 1930, authorizes the Legislature of Puerto Rico to impose a duty on coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the U.S., and the Legislature of Puerto Rico has imposed such a duty. (Secs. 311, 319, 484(a), 46 Stat. 691, as amended, 696, 722, as amended; 19 U.S.C. 1311, 1319, 1484(a))

§ 7.8 Insular possessions of the U.S. other than Puerto Rico.

(a) When articles coming directly into the U.S. from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Note 3(a)(iv), HTSUS (19 U.S.C. 1202), relating to certain articles produced in such insular possessions, there shall be filed in connection with the entry a certificate of origin covering articles shipped from insular possessions (except Puerto Rico) to the U.S. The certificate shall be on Customs Form 3229, and shall be signed by the chief or assistant chief customs officer at the port of shipment,[5] showing that the merchandise is the growth or product of such possession, or manufactured or produced in such possession, from materials the growth, product, or manufacture of any such possession or of the U.S., or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements). A certificate shall not be required for any shipment valued at $100 or less.

(b) When articles coming directly into the U.S. from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Note 3(a)(iv), HTSUS, relating to certain articles returned to the U.S., there shall be filed in connection with the entry the following evidence: **[TD 89-1.]**

(1) A certificate, on Customs Form 3311, of the district director at the port from which the merchandise was shipped from the U.S. No certificate shall be required if the district director is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed on the merchandise by reason of the shipment. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise was shipped from the port at which entry is made and the fact of shipment appears on Customs records, the fact of return shall be noted on the record but the filing of the certificate on Customs Form 3311 shall not be required; and

(2) A declaration of the shipper in the insular possession in the following form:

I, _____ of _____ do hereby declare that to the best of my knowledge and belief the articles identified below were sent directly from the U.S. on _____, 19___, to _____, of _____, on (insular possession) the _____, and that the (Name of carrier) articles remained in said insular possession until shipped by me directly to the U.S. via the _____ (Name of carrier) on _____, 19 ___.

_____ _____

[5] Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa are American territory, but not within the Customs territory of the U.S. Importations into those islands are not governed by the Tariff Act of 1930 or these Customs Regulations. The Customs administration of American Samoa is under the jurisdiction of the Department of the Interior (Office of Territories). The Customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The Customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. The Customs administration of Guam is under the Government of Guam. A certificate signed by the Commander at the Johnston Island Air Force Base, or his assistant, shall be acceptable as proof of origin. Kingman Reef is understood to be uninhabited.

Marks: _____, Numbers: _____ Quantity: ___ ___, Description: _____, Value: _____.

Dated: at _____, this _____ day of _____, 19_____,

(Shipper)

The declaration shall not be required in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment.

(c) When merchandise excluding any shipments valued at $100 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond containing the bond conditions set forth in § 113.62 of this chapter, for the production thereof may be taken on Customs Form 301. A bond for production of a bill of lading shall be taken on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter. **[TD 84-213.]**

(d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent (or more than 70 percent with respect to watches and watch movements), a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the U.S., may be imported into the U.S. from a foreign country, other than Cuba or the Philippines, free of duty), plus the cost of transportation to such insular possesson (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the U.S. determined in accordance with § 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), of the article brought into the U.S.

(e) A special Customs invoice on Customs Form 5515 shall be required in connection with shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt from the requirement of a special Customs invoice under § 141.83 of this chapter if it had been imported from a foreign country, or when the shipment is covered by a certificate of origin provided for in paragraph (a) of this section.

(f) Merchandise may be withdrawn from a bonded warehouse under § 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under § 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), on articles manufactured or produced in the U.S. and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on articles manufactured or produced in the U.S. with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef, Johnston Island. **[TD 50501, 53993, 73-220, 83-7.]**

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the U.S. **[TD 43302.]**

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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10.311 Documentation for election to average for motor vehicles.

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, Harmonized Tariff Schedules of the U.S.), 1624. Secs. 10.11 through 10.24 also issued under sec. 502, 46 Stat. 731, as amended, 77A Stat. 14; 19 U.S.C. 1202 (General Note 10, Harmonized Tariff Schedules of the U.S.), 1502. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: 28 FR 14663, Dec. 31, 1963, unless otherwise noted. Sections 10.151 through 10.153 and §§ 10.161 through 10.166 appear at 38 FR 17445, July 2, 1973, unless otherwise noted.

Articles Exported and Returned

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in this part, the following documents shall be filed in connection with the entry of articles claimed to be free of duty under subheading 9801.00.10 and subheading 9802.00.20, Harmonized Tariff Schedule of the U.S. (HTSUS): **[CIE 586/41. TDs 34553, 36655, 51222, 52127, 53611, 54995, 55978, 72-119, 88-79.]**

(1) A declaration by foreign shipper in substantially the following form, if the value of the returned articles exceeds $1,000: **[TDs 45888(9), 49959(4), 51519, 53336, 53638, 53869, 54056, 54462, 72-119.]**

I, _____, declare that to the best of my knowledge and belief the articles herein specified are products of the U.S.; that they were exported from the U.S., from the port of _____ on or about _____, 19___; that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	*Number*	*Quantity*	*Description*	*Value, in U.S. coin*
.....		.....	.....	.....
.....		.....	.....	.....
.....		.....	.....	.....
.....				.....
(Date)				(Signature)
.....				.....
(Address)				(Capacity)

(2) A declaration for free entry by the owner, importer, consignee, or agent on the top portion of Customs Form 3311. **[TDs 39663, 49703(1), 53268, 72-119.]**

(3) A Certificate of Exportation on the bottom portion of Customs Form 3311 executed by the district director at the port from which the merchandise was exported. Such certificate shall show whether drawback was claimed or paid on the merchandise covered by the certificate and, if any was paid, the amount thereof. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise has been exported from the port at which entry is made and the fact of exportation appears on the records of the customhouse, the fact of reimportation shall be noted on such export record. In such case the filing of the certificate on Customs Form 3311 shall not be required. **[TDs 37983, 38226, 45588(1), 53336, 72-119.]**

(b) If, in any case where the appraising officer's report does not show definitely that merchandise the value of which exceeds $1,000 is of domestic origin, Customs Form 3311 has not been executed by the owner or ultimate consignee, the district director may require the execution of such form by the owner or ultimate consignee. In such a case Customs Form 3311 shall be filed within 3 months after the date of the demand therefor upon the person in whose name the entry was filed. If the owner or ultimate consignee is a corporation, such form may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in Subpart C, Part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. In the case of articles which are unquestionably the products of the U.S. and which have not been advanced in value or improved in condition, if the district director is satisfied from the character thereof or otherwise that they are free of duty under Chapter 98, Subchapter I, HTSUS, and if the total value of the articles of American origin contained in the shipment does not exceed $250, the execution of Customs Form 3311 shall not be required therefor, except when used as an entry under paragraph (g), (h), or (i) of this section. **[TDs 32388, 51008, 53268, 53336, 53527, 53638, 54462, 55978, 72-119, 78-99, 88-79.]**

(c) A certificate from the master of a vessel stating that products of the U.S. are returned without having been unladen from the exporting vessel may be accepted in lieu of the declaration of the foreign shipper required by paragraph (a)(1) of this section. **[TDs 37009, 49658, 53336, 55978, 72-119.]**

(d) If the district director is reasonably satisfied, because of the nature of the articles, or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9801.00.10 or 9802.00.20, HTSUS, and related section and additional U.S. notes, he may waive the requirements for producing the documents specified in paragraphs (a) and (b) of this section except when Customs Form 3311 is used as an entry summary (as defined in § 141.0a(b) of this chapter) under paragraph (g) or (h), or as an informal entry under paragraph (i). **[TDs 52157, 55978, 72-119, 79-221, 88-79.]**

(e) No evidence relative to the conditions of subheading 9801.00.10, HTSUS, shall be required in the case of articles the product of the U.S. in use at the time of importation as

the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS **[TDs 53557, 54056, 54462, 55978, 72-119, 88-79.]**

(f) In the case of photographic films and dry plates manufactured in the U.S. (except motion picture films to be used for commercial purposes) exposed abroad and entered under subheading 9802.00.20 HTSUS, the requirements of paragraphs (a), (b), and (c) of this section are applicable except that the declaration on Customs Form 3311 to the effect that the articles "are returned without having been advanced in value or improved in condition by any process of manufacture or other means" shall be crossed out, and the entrant shall show on the form that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed and developed, and, in the case of motion picture films, that they will not be used for commercial purposes. This modification shall also be made in the declaration by the foreign shipper provided for in paragraph (a)(1) of this section. **[TDs 53557, 55978, 72-119.]**

(g) *Aircraft and aircraft parts and equipment.*—(1) In the case of aircraft and aircraft parts and equipment returned to the U.S. under subheading 9801.00.10, HTSUS, by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the U.S., the entry summary may be made on Customs form 3311. The entry summary on Customs form 3311 shall be executed by the entrant and supported by the entry documentation required by § 142.3 of this chapter. If the Customs officer is satisfied that the articles are products of the U.S., that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section shall not be required, and no bond need be filed for their production.

(2) The entrant shall show on Customs form 3311:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the U.S., in the block headed "Articles returned to (name and address)",

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,

(iv) A description of the articles,

(v) The value of the articles, and

(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If Customs form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary. **[TDs 68-26, 72-119, 78-99, 79-221, 89-1.]**

(h) *Nonconsumable vessel stores and equipment.*—(1) In the case of nonconsumable vessel stores and equipment returned to the U.S. under subheading 9801.00.10, HTSUS, the entry summary may be made on Customs form 3311. The entry summary on Customs form 3311 shall be executed in duplicate by the entrant and supported by the entry documentation required by § 142.3 of this chapter. Before an entry summary on Customs form 3311 may be accepted for nonconsumable vessel stores and equipment, the Customs officer shall be satisfied that:

(i) The articles are products of the U.S.,

(ii) The articles have not been improved in condition or advanced in value while abroad,

(iii) No drawback has been or will be paid, and

(iv) No duty equal to an internal revenue tax is payable under subheading 9801.00.80, HTSUS.

(2) The declaration of the foreign shipper described in paragraph (a)(1) of this section and the certificate of exportation described in paragraph (a)(3) of this section shall not be required in connection with an entry for nonconsumable vessel stores and equipment on Customs form 3311.

(3) To satisfy the Customs officer that no drawback has been or will be paid on the article in connection with their removal from the U.S., the master of the vessel or other person having knowledge of the facts shall furnish a written declaration which may be made on the reverse side of Customs form 3311 showing that the articles were:

(i) Exported as stores or equipment on a U.S. vessel or a vessel operated by the U.S. Government,

(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed, or,

(iii) For transshipment as stores or equipment to another vessel.

(4) The entrant also shall show:

(i) The name of the importing vessel,

(ii) The date of its arrival,

(iii) A description of the articles, and

(iv) The value of the articles.

(5) If Customs form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary. **[TDs 72-119, 78-99, 79-221, 89-1.]**

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the U.S. and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under subheading 9801.00.10 on Customs Form 3311, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of a certificate of exportation or evidence of similar purport, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the U.S., and the value of the articles. The entrant shall also produce evidence of his right to make entry (except as provided in § 142.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the U.S., the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311. (46 Stat. 759; 19 U.S.C. 1202) **[TDs 72-119, 78-99.]**

(j) In the case of products of the U.S., when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration, prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the U.S. for credit, free entry thereof may be made under subheading 9801.00.10, HTSUS, on Customs Form 3311, (a Customs Form 7501 must be submitted as well for articles, described in paragraph (b) of this

and § 143.23(h) of this chapter) executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of a certificate of exportation or evidence of similar purport, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The person making entry shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the U.S., and the value of the articles. The person making entry shall also produce evidence of his right to make entry (except as provided in § 141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the U.S., the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311. **[TDs 82–83, 89–1.]**

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in § 10.1(f) or in paragraphs (c) and (f) of this section, no free entry shall be allowed under Chapter 98, Subchapter 1, Harmonized Traffic Schedule of the U.S. (HTSUS) in the final liquidation of an entry unless the district director of Customs is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the U.S., and unless no internal-revenue tax is imposed on the importation of like articles not previously exported from the U.S. or, if such tax is being imposed at the time of entry for consumption or withdrawal from warehouse for consumption, the district director of Customs is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the U.S. in § 10.1(f), when it is impracticable, because of the destruction of Customs records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the U.S. which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows: (1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the U.S., the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section) and (2) if there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See § 10.7(a).) Except as provided for in § 10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the U.S.; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the U.S. of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary Customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed. **[TDs 44599, 49658, 53336, 53557, 53687, 55978, 68–104, 83–240, 89–1.]**

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles: **[TDs 53687, 53909.]**

Article	Duty assessment
Drums, metal (when not exempt from duty in accordance with sec. 10.3(c))	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.0065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed)	$0.08478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) The following articles shall be admitted free of duty, even though exported from the U.S. with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise than under Chapter 98, Subchapter 1, HTSUS if of foreign origin; **[TD 55978.]**

(2) Substantial containers or holders of domestic manufacture, including shooks and staves when returned as boxes or barrels, when in use at the time of importation as the usual containers of merchandise; **[TDs 44269, 44599, 45280, 47581, 47699, 47822, 55978.]**

(3) Any article provided for in 9801.00.70 or 9801.00.80, HTSUS with respect to which the district director has determined that the collection of duty under such HTSUS, would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty; and **[TDs 53336, 53687, 55978, 83–240.]**

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.

(d) Articles manufactured or produced in the U.S. in a Customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the U.S. **[TD 38673.]**

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(f) Tobacco products and cigarette papers and tubes classifiable subheading 9801.00.80, HTSUS may be released from customs custody without the payment of that part of the duty attributable to the internal-revenue tax for return to internal-revenue bond as provided by § 5704(d) of the Internal Revenue Code of 1954. **[TDs 68–104, 83–240, 89–1.]**

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the U.S. must be erased at the importer's expense under Customs supervision before their delivery from Customs custody.

§ 10.5 Shooks and staves; cloth boards; district director's account.

(a) Shooks and staves produced in the U.S. and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations in this part. **[TDs 33369, 47559, 49658, 54056.]**

(b) The term "shook" embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported. **[TD 33323.]**

(c) [Reserved]

(d) An exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file in triplicate with the district director at the port of exportation, at least 6 hours before the landing of the articles on the exporting vessel, a notice of intent to export, Customs Form 3311. **[TDs 55941, 55978, 78–99.]**

(e) The certificate of exportation block of Customs Form 3311 shall be completed in triplicate by the district director after verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the district director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained. **[TDs 54056, 55941, 78-99.]**

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the U.S. from a person abroad other than the one to whom they were exported from the U.S., the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported from this country the certificate or certificates, Customs Form 3311, covering the exportation of the shooks or staves from the U.S., or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 3311, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels. **[TDs 54056, 55941, 78–99.]**

(g) Accounts shall be kept by the district director at the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boxes, barrels, etc. Notifications of such returns shall be given to the port of exportation by the district director at the port of importation. When returns in the form of boxes, barrels, etc., entirely account for the shooks and staves exported as shown on the appropriate Customs Form 3311, the district director maintaining the account shall so inform the district director making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation. **[TDs 54056, 55941, 78–99.]**

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the district director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation. **[TDs 54056, 55978, 89–1.]**

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 3311 at the time of filing the entry. Upon receipt, from the district director at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the district director's notice to him of any disallowance, for

referral of the question to the Commissioner of Customs for review. [TD 87-75.]

§ 10.7 Substantial containers or holders.

(a) Substantial containers or holders, which are products of the U.S., which are of the usual and ordinary types used in the shipment or transportation of goods, which are reusable for such purposes, and which are imported containing or holding merchandise, shall be entered under the general regulations governing the free entry of domestic products exported and returned. When such containers or holders are imported not containing or holding merchandise they may be admitted without entry if readily identifiable as products of the U.S. [TDs 44148, 47559, 49585, 49658, 53687, 55978, 86-118.]

(b) Substantial containers or holders, which are of foreign production and previously imported duty paid, which are of the usual or ordinary types used in the shipment or transportation of goods, which are reusable for such purpose, and which are imported containing or holding merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), and (2) there is filed in connection with the entry a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section. [CD 450. TDs 30404, 34955, 39623, 49658, 54056, 55941, 5[illegible]8, 82-145.]

(c) The certificate to be furnished by the foreign shipper for the use of the district director at the port of entry shall be in the following form: [TDs 49658, 54056, 55978.]

I, _____, of _____, do hereby certify that to the best of my knowledge and belief the substantial containers and holders mentioned in (the annexed invoice) (invoice No. _____ of _____, 19__)* are of the manufacture of _____ and were exported from the U.S. at the port of _____, per S.S. _____ on _____, 19__, and that the same are being returned to the U.S. (empty) (filled with _____) (holdings _____).*

_____
Shipper

(d) The district director, after verification of the foreign shipper's certificate with the records of the district director at the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6(c) shall be applicable. [TDs 54056, 55978.]

(e) If claim for exemption from duty for such containers or holders of foreign production previously imported duty paid is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry. [TDs 49658, 54056, 55978.]

(f) When such containers or holders of foreign production previously imported duty paid are reimported empty, they may be admitted without entry if readily identifiable as having been previously imported duty paid. [TD 55978.]

§ 10.8 Articles exported for repairs or alterations.

(a) Before exporting articles which are subject on return to the U.S. to duty on the value of the repairs or alterations performed abroad, as provided for in subheading 9802.00.40, Harmonized Tariff Schedule of the U.S. (HTSUS), a Certificate of Registration (top portion of Customs Form 4455) shall be filed (in an original only) by the owner or exporter with the district director before the departure of the exporting conveyance. This procedure will permit the district director to examine the articles before they are exported. The applicant shall be notified by the district director of the place to which he shall deliver the articles for examination. All expense in connection with the delivery of the articles, cording, sealing, marking, and transfer to the exporting conveyance, shall be paid by the exporter. Except for those articles exported by mail which can be identified by manufacturer's mark or number, the district director may require the articles to be exported under Customs supervision. If supervision is required, a photograph of the article or some other means of identification, shall be furnished to the Customs officer. [Abs. 4827. CDs 438, 717. CIE 761/40. TDs 33890, 35330, 44212, 44757, 47304, 49658, 50249(3), 54995, 55978, 72-119, 82-49, 89-1.]

(b) When the report of the Customs officer showing the examination of the articles and their lading on the exporting conveyance or their delivery for mailing has been endorsed on the Customs Form 4455 covering such articles, the form shall be given to the exporter for use in connection with the return of the articles. If the articles are being exported through the mails and the Customs Form 4455 has been completed in duplicate, the Customs officer shall enclose the duplicate copy of the form in the package being exported. The owner or exporter, in all other cases, may enclose a duplicate copy of the certificate with the articles being exported in any other manner for repairs or alterations. In order to facilitate the entry of articles, regardless of the mode of exportation, the foreign shipper may include a duplicate copy of the registration certificate, completed prior to exportation, in the returned package. [TDs 53336, 53611, 55978, 72-119.]

(c) When an exporter resides more than 20 miles from a Customs office, articles being exported for repairs or alterations through the mail, may, in accordance with the following procedures which have been approved by the Post Office Department, be exported through a local post office: [TDs 55978, 72-119.]

(1) The articles shall be delivered to the postmaster in an unpacked condition;

(2) Customs Form 4455 completed in original and duplicate shall be presented to the postmaster with the articles;

(3) The original Customs Form 4455 with the Certificate of Registration executed by the postmaster shall be returned to the exporter for use, if necessary, in clearing articles on their return to the U.S.;

(4) The duplicate Form 4455 shall be enclosed in the parcel with the articles being exported and shall accompany the articles on their return to the U.S. to facilitate processing the entry; and

(5) The exporter shall bear all expense incurred under this procedure, including charges assessed by the U.S. Postal Service.

(d) When articles other than those exported by mail or parcel post are examined and registered at one port and exported for repair or alterations through another port, the district director may require proof of exportation in those cases where the Customs Form 4455 does not reflect that the subject articles were exported under Customs supervision. [TDs 55978, 72-119, 82-49.]

(e) There shall be filed in connection with an entry covering articles entered under the provisions of subheading 9802.00.40, HTSUS, a declaration from the person who

*Cross out inapplicable words.

performed such repairs or alterations in substantially the following form: **[TDs 55978, 72-119, 89-1.]**

_____
(Place and date)

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the U.S., were received by me (us) on _____, 19____, from _____ (Name and address of owner or exporter in the U.S.); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) fair market value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) fair market value of repairs or alterations (see Chapter 98, Subchapter 2, HTSUS)	Total value of articles after repairs or alterations
(Date)			(Signature)
(Address)			(Capacity)

(f) There shall be filed in connection with the entry the Certificate of Registration (Customs Form 4455) a declaration made by the owner, importer, consignee, or agent having knowledge of the facts that the articles entered in their repaired or altered condition are the same articles covered by the Certificate of Registration. This declaration shall also show that the full cost or (when no charge is made) fair market value of the repairs or alterations is correctly stated in the entry. When all of the merchandise covered by the Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations not exceeding $250 in value, the district director at the port where any portion of the merchandise is entered shall note the quantity entered on the registration certificate and return the certificate to the submitter thereof for use in connection with any further importation covered by such certificate. **[TD 72-119.]**

(g) When all the merchandise covered by a Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations valued in excess of $250, there shall be filed with the entry at the time of entry the certification of the owner, importer, consignee, or agent having knowledge of the facts, that the articles entered in their repaired or altered condition are a portion of the articles covered by such Certificate of Registration. This certification shall be filed in lieu of the Certificate of Registration (Customs Form 4455), in the following form: **[TDs 72-119, 79-159.]**

I hereby certify that the merchandise covered by entry No. _____ dated _____, is a portion of the merchandise exported under Customs Form 4455 _____ (Certificate of registration No.) dated _____, to _____ (Name of foreign consignee) _____, for the purpose and with the intent of _____ (Repairing or altering) the articles in the foreign country. I further certify that original Customs Form 4455 has been charged with the quantities herein, identified with the entry and port, and will be maintained at _____ (Firm and address) for a period of 5 years from the date of the related entry of the merchandise covered by such Certificate of Registration, for verification by appropriate Customs officers.

(h) The Certificate of Registration (Customs Form 4455) referred to in paragraph (g) of this section shall be retained by the firm therein referred to for a period of 5 years from the date of the related entry of the merchandise covered by the Certificate of Registration for verification by appropriate Customs officers. Each quantity entered shall be accounted for in such a manner as to identify the specific entry (entry number), and port of entry, with the total quantity of the exported articles on the reverse side of the Certificate of Registration (Customs Form 4455) until the total quantity has been entered. **[TDs 49703(2), 53336, 72-119, 79-159.]**

(i) If the district director concerned is satisfied because of the nature of the articles, or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.40, HTSUS, and related section and additional U.S. notes, he may waive the declaration provided for in paragraphs (e) and (f) of this section. **[TDs 42258, 49658, 53336, 54462, 55978, 72-119.]**

(j) In the event there has been compliance with registration requirements set forth in paragraph (a) of this section and Customs Form 4455 is not available at the time of entry, the district director may waive the production of Customs Form 4455 provided the merchandise is entered at one time at one port of entry, and he is satisfied that the returned merchandise meets the requirements of subheading 9802.00.40, HTSUS, and related section and additional U.S. notes. **[TDs 55574, 55978, 72-119, 89-1.]**

(k) In any case where an imported article was exported for repairs or alterations without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.20, TSUS, may waive the production of the Customs Form 4455. The importer may establish eligibility for entry under subchapter 9802.00.40, HTSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district directors may

require such additional documentation as is deemed necessary as proof of exportation. The district director may also, in his discretion, waive the registration requirements of this section, prior to exportation of the articles, upon application in writing by an exporter-importer located within his district when it is indicated that the duty on merchandise would be less than $25 if not within the purview of subchapter 9802.00.40, HTSUS and it is indicated that the shipment on its return to the U.S. will be covered by a mail or other informal entry. Customs Form 4455, appropriately modified, may be used by the district director in issuing the waiver. **[TDs 55942, 55978, 72–119, 85–162, 89–1.]**

(l) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the repairs or alterations. The cost or fair market value, as the case may be, of the repairs or alterations outside the U.S., which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subchapter 9802.00.40, HTSUS shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, and furnishing of tools or equipment for doing the repairs or alterations abroad or otherwise. (Sec. 624, 46 Stat. 759; 19 U.S.C. 1202) **[TDs 55978, 72–119.]**

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under subheading 9801.00.25, Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if: **[TDs 72–221, 89–1.]**

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the U.S.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under subheading 9801.00.25, Harmonized Tariff Schedule of the U.S.:

(1) A declaration by the person abroad who received and is returning the merchandise to the U.S., in substantially the following form:

I declare that the _____ (Description of articles) were received by me from _____ (Name and address of U.S. exporter), that they have not been advanced in value or improved in condition by any process of manufacture or other means and are being returned to _____ (Name and address of consignee in the U.S.) because they do not conform to sample or specifications for the following reasons:

_____

_____

_____

_____
(Date) (Signature)

_____
(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the _____ (Description of articles) were previously imported into the U.S. at the Port of _____ (Name of port), Entry No.___, on _____ (Date of entry) by _____ (Name and address of importer) at which time duty was paid; that they were exported from the U.S. at the Port of _____ (Name of port) on _____ (Date of exportation) by _____ (Name and address of exporter) without benefit of drawback; that the articles are being reimported by or for the account of _____, and, that the attached declaration from _____ (Name of foreign shipper) is correct in every respect.

_____
(Date) (Signature)

_____
(Address) (Title)

(c) If the district director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of subheading 9801.00.25, Harmonized Tariff Schedule of the U.S. and the related section and additional U.S. notes have been met, he may waive the production of the documents provided for in paragraph (b) of this section. (Secs. 484, 624, 46 Stat. 722, as amended, 759; 19 U.S.C. 1202, 1484) **[TD 89–1.]**

§ 10.9 Articles exported for processing.

(a) Before the exportation of articles subject, on return to the U.S., to duty on the value of the processing performed abroad as provided for in subheading 9802.00.60, Harmonized Tariff Schedule of the U.S. (HTSUS), a certificate of registration (top portion of Customs Form 4455), shall be filed (in an original only), by the owner or exporter with the District Director of Customs at a time prior to the departure of the exporting conveyance which will permit an examination of the articles. A statement shall be included on the reverse side of Customs Form 4455 by the exporter or owner substantially as follows: **[TDs 67–108, 72–119, 73–136, 89–1.]**

The articles described in this certificate were manufactured in the U.S. by _____ (Name and address) or, if of foreign origin, were subjected to _____ (show processes of manufacture, such as molding, casting, machining, etc.) in the U.S. by _____ (Name and address). The articles in their changed conditions will be returned for further processing by _____ (Name and address); or, if further processing of the articles in the U.S. will be performed by a person not presently known, the reasons for believing the articles will be returned for further processing are

_____

and the reason the person is not presently known is

_____

(b) The applicant shall be notified by the district director of the place to which he shall deliver the articles for examination. All expense in connection with the delivery of the

articles, cording, sealing, marking, and transfer to the exporting conveyance, shall be borne by the exporter. The articles shall be exported under Customs supervision, except those articles exported by mail which can be identified by manufacturer's mark or number. A photograph or other means of identification shall be furnished when required by the Customs officer. **[TD 72-119.]**

(c) When the report of the Customs officer showing the examination of articles and their lading on the exporting conveyance or their delivery for mailing has been endorsed on the Customs Form 4455 covering such articles, the form shall be given to the exporter for use in connection with the return of the articles. If the articles are being exported through the mails and the Customs Form 4455 (Certificate of Registration) has been completed in duplicate, the Customs officer shall enclose the duplicate copy of the form in the package being exported. The owner or exporter, in all other cases, may enclose a duplicate copy of the certificate with the articles being exported in any manner for processing. In order to facilitate the entry of an article, regardless of the mode of exportation, the foreign shipper may include a duplicate copy of the registration certificate, completed prior to exportation, in the returned package. **[TD 72-119.]**

(d) When articles other than those exported by mail or parcel post are examined and registered at one port and exported for processing through another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. **[TD 72-119.]**

(e) There shall be filed in connection with an entry covering articles entered under the provisions of subheading 9802.00.60, HTSUS a declaration by the person who performed the processing abroad in substantially the following form: **[TDs 72-119, 89-1.]**

_____
(Place and date)

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the U.S., were received by me (us) on _____, 19__, from _____ (Name and address of owner or exporter in the U.S.); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) fair market value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	*Description of articles and of processing*	*Full cost or (when no charge is made) fair market value of processing* see Chapter 98, Subchapter II, HTSUS*	*Total value of article after processing*

(f) There shall be filed in connection with the entry the Certificate of Registration (Customs Form 4455) and a declaration made by the owner, importer, consignee, or agent having knowledge of the facts that the articles entered in their processed condition are the same articles covered by the Certificate of Registration. This declaration shall also show that the full cost or (when no charge is made) fair market value of the processing is correctly stated in the entry. There shall be included a concise statement as to the nature of the processing performed outside the U.S. immediately prior to the current importation and to the processing to be performed thereafter in the U.S., showing the name and address of the processor who will do the subsequent processing. When all of the merchandise covered by the Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations not exceeding $250 in value, the district director at the port where any portion of the merchandise is entered shall note the quantity entered on the registration certificate and return the certificate to the submitter thereof for use in connection with any further importation covered by such certificate. **[TD 72-119.]**

(g) If the district director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9802.00.60, HTSUS, and related section and additional U.S. notes, he may waive the declaration provided for in paragraphs (e) and (f) of this section. **[TD 72-119.]**

(h) In the event there has been compliance with the registration requirements (Customs Form 4455) set forth in paragraph (a) of this section and such form (Customs Form 4455) is not available at the time of entry, the district director may waive the production of Customs Form 4455 provided the merchandise is entered at one time at one port of entry, and he is satisfied that the returned merchandise meets the requirements of subheading 9802.00.60, HTSUS and the related section and additional U.S. notes **[TDs 72-119, 89-1.]**

(i) In any case where an imported article was exported for processing without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item subheading 9802.00.60, HTSUS, may waive the Customs Form 4455. The importer may establish eligibility for entry under item 806.30, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district director may require such additional documentation as is deemed necessary as proof of exportation. The district director may also, in his discretion, waive the registration requirements of this section, prior to exportation

of the articles, upon application in writing by an exporter-importer located within his district when it is indicated that the duty on the merchandise would be less than $25 if not within the purview of item 806.30, it is indicated that the shipment on its return to the U.S. will be covered by a mail or other informal entry. Customs Form 4455, appropriately modified, may be used by the district director in issuing the waiver. [TDs 72-119, 85-162, 89-1.]

(j) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the processing. The cost or fair market value, as the case may be, of the processing outside the U.S. which is set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.60, HTSUS shall be limited to the cost or value of the processing actually performed abroad (including all domestic and foreign articles used in the processing, but does not include the exported U.S. metal article) and shall not include any of the expenses incurred in this country, whether by way of engineering costs, preparation of plans or specifications, and the furnishing of tools or equipment for doing the processing abroad, or otherwise. (R.S. 251, as amended, 77A Stat. 14, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624) [TDs 72-119, 87-75, 89-1.]

§ 10.10 [Reserved TD 87-75.]

Articles Assembled Abroad With U.S. Components

§ 10.11 General.

(a) Section 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of subheading 9802.00.80, HTSUS (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by subheading 9802.00.80, HTSUS (19 U.S.C. 1202), for American-made fabricated components which are returned to the U.S. as parts of articles assembled abroad. The examples included in these sections described specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the U.S. Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under subheading 9802.00.80, HTSUS (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein. [TDs 73-27, 75-230, 89-1.]

(b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under item 807.00 and his complying with the documentary requirements set forth in § 10.24.

§ 10.12 Definitions.

As used in §§ 10.11 through 10.24, the following terms shall have the meanings indicated: [TDs 73-27, 75-230.]

(a) *American-made.* The term "American-made" is used to refer to a product of the U.S. as defined in paragraph (e) of this section.

(b) *Assembly.* "Assembly" means the fitting or joining together of fabricated components.

(c) *Exemption.* "Exemption" means the deduction of the cost or value of products of the U.S. which were assembled abroad in accordance with the requirements of subheading 9802.00.80, HTSUS (19 U.S.C. 1202), from the full value of the assembled article.

(d) *Fabricated component.* "Fabricated component" means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly.

(e) *Product of the U.S.* A "product of the U.S." is an article manufactured within the Customs territory of the U.S. and may consist wholly of U.S. components or materials, of U.S. and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article. [TD 89-1.]

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the U.S., which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the U.S. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the HTSUS (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned U.S. components which qualify for the exemption bears to the full value of the assembled article. [TDs 75-230, 89-1.]

Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein.

Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is $30, and if the value of the American-made integrated circuit is $10, then the value of the integrated circuit represents one third of the total value of the assembled article and the duty on the assembled article will be reduced by one third ($.25). Therefore, the duty on the assembled movement is 50 cents.

§ 10.14 Fabricated components subject to the exemption.

(a) *Fabricated components, the product of the U.S.* Except as provided in § 10.15, the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), applies to fabricated components, the product of the U.S. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the U.S. to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components. **[TDs 73–27, 75–230, 89–1.]**

Example 1. Articles identifiable in their exported condition as components or parts of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts of wearing apparel, are regarded as fabricated components.

Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the U.S., are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process.

Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the U.S., and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad.

Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials may become products of the U.S. if they undergo a process of manufacture in the U.S. which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the U.S. will not result in the substantial transformation of such product and it remains the product of a foreign country.

Example 1. A cast metal housing for a valve is made in the U.S. from imported copper ingots, the product of a foreign country. The housing is a product of the U.S. because the manufacturing operations performed in the U.S. to produce the housing resulted in a substantial transformation of the foreign copper ingots.

Example 2. An integrated circuit device is assembled in a foreign country and imported into the U.S. where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the U.S. because the operations performed in the U.S. do not result in a substantial transformation of the foreign integrated circuit device.

Example 3. A circuit board assembly for a computer is assembled in the U.S. by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the U.S., for purposes of subheading 9802.00.80, HTSUS (19 U.S.C. 1202).

§ 10.15 Fabricated components not subject to the exemption.

Fabricated components which are not products of the U.S. are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the U.S.: **[TDs 73–27, 75–230, 89–1.]**

(a) From continuous Customs custody with remission, abatement, or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the U.S. or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the U.S. under subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of subheading 9813.00.05, HTSUS (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the U.S. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be considered a product of the U.S., no exemption may be given for the value of the electric motors, since they were exported after manufacture or production in the U.S. under the provision of item 864.05, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 10.16 Assembly abroad.

(a) *Assembly operations.* The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly. **[TDs 73–27, 75–230, 89–1.]**

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despooled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despooled from a continuous length, and rolled into a cylinder wherein the foil and paper

are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the U.S. on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components.

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and shall not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

(c) *Operations not incidental to the assembly process.* Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, shall not be regarded as incidental to the assembly and shall preclude the application of the exemption to such article. The following are examples of operations not considered incidental to the assembly as provided under subheading 9802.00.80, HTSUS (19 U.S.C. 1202):

(1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts;

(2) Cutting of garment parts according to pattern from exported material;

(3) Painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics;

(4) Chemical treatment of components or assembled articles to impart new characteristics, such as showerproofing, permapressing, sanforizing, dying or bleaching of textiles;

(5) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected.

(d) *Joining of American-made and foreign-made components.* An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly.

Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of U.S. origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly.

(e) *Subassembly.* An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption.

(f) *Packing.* The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Rule of Interpretation 5, HTSUS (19 U.S.C. 1202) **[TD 89-1.]**

§ 10.17 Valuation of exempted components.

The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. U.S. port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. U.S. port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components shall be determined in accordance with § 402 or § 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). **[TDs 73-27, 75-230.]**

§ 10.18 Valuation of assembled articles.

As in the case of the appraisement of any other imported merchandise (see subpart C of Part 152 of this chapter), the full value of assembled articles imported under subheading

9802.00.80, HTSUS (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 *et seq.* **[TDs 73-27, 75-230, 87-89, 89-1.]**

§ 10.19 [Reserved TD 87-89.]

§ 10.20 [Reserved TD 87-89.]

§ 10.21 Updating cost data and other information.

When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the district director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances. **[TDs 73-27, 75-230.]**

§ 10.22 Marking.

Assembled articles entitled to the exemption are considered products of the country of assembly for the purposes of the country of origin marking requirements of § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). If an imported assembled article is made entirely of American-made materials, the U.S. origin of the material may be disclosed by using a legend such as "Assembled in _____ from material of U.S. origin," or a similar phrase. (Sec. 304, 46 Stat. 687, as amended (19 U.S.C. 1304)) **[TDs 73-27, 75-230.]**

§ 10.23 Standards, quotas, and visas.

All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding properties, quotas, and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise. **[TDs 73-27, 75-230.]**

§ 10.24 Documentation.

(a) *Documents required.* The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). **[TDs 73-27, 75-230, 89-1.]**

(1) *Declaration by the assembler.* A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form:

I, _____, declare that to the best of my knowledge and belief the _____ were assembled in whole or in part from fabricated components listed and described below, which are products of the U.S.:

Marks of identification, numbers	Description of component	Quantity	Unit value at time and place of export from U.S. [1]	Port and date of export from U.S.	Name and address of manufacturer

[1] In accordance with U.S. Note 4 to Subchapter II of Chapter 98, HTSUS (19 U.S.C. 1202).

Description of the operations performed abroad on the exported components (in sufficient detail to enable Customs officers to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS (19 U.S.C. 1202) (attach supplemental sheet if more space is required)):

_____

_____

_____

Date Signature

_____

Address Capacity

(2) *Endorsement by the importer.* An endorsement, in substantially the following form, shall be signed by the importer:

I declare that to the best of my knowledge and belief the (above), (attached) declaration, and any other information submitted herewith, or otherwise supplied or referred to, is correct in every respect and there has been compliance with all pertinent legal notes to the HTSUS (19 U.S.C. 1202).

_____

Date Signature

_____

Address Capacity

(b) *Revision of format.* In specific cases, the district director may revise the format of either of the documents specified in paragraph (a) of this section and may make such changes as conditions warrant, provided the data and information required to be supplied in these documents are presented. For example, if the components were furnished by the importer, the information on components may be supplied as part of the importer's endorsement, rather than as part of the assembler's declaration.

(c) *Reference to previously filed documents.* In lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the documents specified in paragraph (a) of this section may refer to assembly descriptions and lists of components previously filed with and approved by the district director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with

the district director to maintain such records and keep them available for examination by authorized Customs officers.

(d) *Waiver of specific details for each entry.* There are cases where large quantities of U.S. components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). In these cases, specific details such as the port and date of export and the name of the manufacturer of the U.S. components may be waived if the district director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the U.S. These controls shall include strict physical segregation of U.S. and foreign components, as well as records of U.S. components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the related entry in a manner so that they are readily available for audit, inspection, copying, reproduction, or other official use by authorized Customs officers. **[TDs 79–159, 89–1.]**

(e) *Waiver of documents.* When the district director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of subheading 9802.00.80, HTSUS, and related legal notes have been met, he may waive the production of such document(s) or information. **[TD 89–1.]**

(f) *Unavailability of documents at time of entry.* If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter for the production of the document(s) may be given pursuant to §§ 113.41–113.46 and 141.66 of this chapter. **[TD 84–213.]**

(g) *Responsibility of correctness.* Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

§ § 10.25—10.30b [Reserved]

Free Entry—Articles for the Use of Foreign Military Personnel

§ 10.30c [Reserved]

Temporary Importations Under Bond

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the U.S. temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the U.S. (HTSUS) unless covered by an A.T.A. carnet as provided in part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by § 142.3 of this chapter. However, when § 10.36 or § 10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with subpart B, part 142 of this chapter.

(2) If Customs Form 7501 is filed at time of entry, it shall serve as both the entry and entry summary and Customs Form 3461 or 7533 shall not be required. Customs Form 7501 shall be in original only, except for entries under subheading 9813.00.05, HTSUS, which required a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:

(i) The HTSUS subheading number under which entry is claimed,

(ii) A statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and

(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval. **[CDs 107, 245. TDs 31999, 38806, 34273, 34374, 36330 (91), 36794, 37318, 43957, 45559, 46155, 47176, 47200, 47201, 48168(5), 48508, 48785, 48971, 49000, 49658, 49664, 49935, 51774, 52612, 53135, 53336, 53610, 53792, 54985, 54995, 55978, 66–39, 71–70, 69–146, 79–221, 89–1.]**

(b) The district director of Customs, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of subheading 9813.00.35, HTSUS, without formal entry or security for exportation. If at the time of arrival it appears that the article is likely to remain in the U.S. beyond 90 days, formal entry and bond shall be taken. **[TDs 53610, 55978, 70–89.]**

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for entry. The time during which the imported article may remain in the U.S. under the entry shall be computed from the date of its original arrival in the U.S. The estimated duties for the purpose of fixing the amount of any bond required by paragraph (f) of this section shall be the estimated duties which would have been required to be deposited had the article been entered under an ordinary consumption entry on the date of the original arrival. **[TDs 53610, 55915, 70–89, 89–1.]**

(d) [Reserved]

(e) The entry or invoice shall: (1) Describe each article in detail; (2) set forth the value of each article; and (3) set forth any marks or numbers thereon or other distinguishing features thereof. In the case of a vehicle, aircraft, or pleasure boat entered under subheading 9813.00.05, HTSUS and § 10.36a, the registration number, and engine or motor

number, and the body number (if available) shall also be shown on the entry. Examination of the imported articles shall be made whenever the circumstances warrant, and occasionally in any event to an extent which will enable the Customs officer to determine that the importation is in agreement with the invoice or entry as to identity and quantity and for the purpose of accepting the entry under the applicable provisions of Chapter 98, Subchapter XIII, HTSUS. No examination for the purpose of appraisement and no appraisement of the articles shall be made. **[TDs 49658, 50075 (4), 50400, 52430, 55915, 56066, 66–39, 89–1.]**

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the duties which it is estimated would accrue (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties determined at the time of entry. If appropriate a carnet, under the provisions of Part 114 of this chapter, may be filed in lieu of a bond on Customs Form 301 (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond taken under any item of subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. **[TDs 84–213, 88–79.]**

(g) Claim for free entry under Chapter 98, Subchapter XIII, HTSUS may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody, or even though released from Customs custody if it is established that the original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of § 520(c)(1), Tariff Act of 1930, as amended, and was brought to the attention of the Customs Service within the time limits of that section. If an entry is so amended, the period of time during which the merchandise may remain in the Customs territory of the U.S. under bond shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from Customs custody. **[TDs 84–213, 89–1.]**

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties.

§ 10.33 Theatrical effects.[36]

(a) In connection with the entry under bond of theatrical scenery, property, and apparel, a declaration of the manager or proprietor shall be required on Customs Form 3325 in addition to the requirements of § 10.31.

(b) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties.

(c) The term "theatrical scenery, properties, and apparel" shall not be construed to include motion-picture films.

§ 10.34 Articles brought by professional artists, lecturers, or scientists.

In connection with the entry of works of art and other articles provided for in subheading 9813.00.70, HTSUS, brought in by professional artists, lecturers, or scientists, a declaration on Customs Form 3325 shall be required in addition to the requirements of § 10.31. **[TD 89–1.]**

§ 10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under subheading 9813.00.10, HTSUS, shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) Invoices covering models of women's wearing apparel entered under subheading 9813.00.10 or 9813.00.25, HTSUS, shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article. **[TDs 87–75, 89–1.]**

§ 10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special Customs invoice, and professional equipment, tools of trade, and repair components for such equipment or tools imported in his baggage for his own use by a nonresident sojourning temporarily in the U.S. may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under subheading 9813.00.20 or 9813.00.50, HTSUS at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the district director, to determine the amount of the bond required by § 10.31(c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special Customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under subheading 9813.00.65, HTSUS, contemplates side trips to a contiguous country with the exhibition within the period of time during which the merchandise may remain in the Customs territory of the

[36] For regulations relating to return without formal entry of theatrical effects taken from the U.S., see § 10.68.

U.S. under bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the Customs officers at the port of exit, and in clearing them through Customs on his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the theatrical effects are finally taken out of the U.S. before the expiration of the period of time during which the merchandise may remain in the Customs territory of the U.S. under bond, including any lawful extension. Similar treatment may be accorded articles entered under other subheadings in Chapter 98, Subchapter XIII, HTSUS upon approval by Headquarters, U.S. Customs Service.

(c) When a commercial traveler contemplates side trips to a contiguous country within the period of time during which the merchandise may remain in the Customs territory of the U.S. under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special Customs invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with Customs officers at the port of exit, and in clearing them through Customs upon his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the samples are finally taken out of the U.S. before the expiration of the period of time during which the merchandise may remain in the Customs territory of the U.S. under bond, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment, tools of trade, and repair components for such equipment or tools imported for his own use by a nonresident sojourning temporarily in the U.S. on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival.

Such a commercial traveler or nonresident shall be required to file a formal entry under subheading 9813.00.20 or 9813.00.50, HTSUS with a bond supported by a surety or cash deposit in lieu of surety. (Sec. 498, 46 Stat. 728, as amended, sec. 101, 76 Stat. 72; 19 U.S.C. 1498; Sch. 8, pt. 5C, Tariff Schedules of the United States.) **[TDs 84-213, 89-1.]**

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the U.S. by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in paragraph (a) of § 10.8) may be entered on the operator's baggage declaration, in lieu of formal entry and examination and may be passed under subheading 9813.00.05, HTSUS, at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit, except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety. **[TDs 66-39, 84-213, 89-1.]**

(b) Each vehicle, pleasure boat, or aircraft to which paragraph (a) of this section is applicable shall be identified on the operator's baggage declaration, which must include the data prescribed in paragraphs (a) and (e) of § 10.31.

(c) Exportation shall be effected in accordance with the provisions of § 10.38.

(d) The privilege of clearance of a vehicle, pleasure boat, or aircraft brought in by the operator of such vehicle, pleasure boat, or aircraft, for repair or alteration on his baggage declaration under bond without surety or cash deposit shall not be granted to an individual who has failed to comply with the provisions of such a bond in connection with any prior arrival. Such individual shall be required to file a formal entry under subheading 9813.00.05, HTSUS with a bond supported by a surety or cash deposit in lieu of surety. (77A Stat. 13, 14, 422; 19 U.S.C. 1202 (Gen. head-notes 10, 11, Sch. 8, Pt. 5C, head-note 1)) **[TD 89-1.]**

§ 10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), may remain in the Customs territory of the U.S., may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate. Extensions may be granted by the district director at the port where the entry was filed upon written application on Customs Form 3173, provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Carriers, Drawback and Bonds Division, Customs Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of the district directors delegated authority shall be referred to the Director, Entry Procedures and Penalties Division, Customs Headquarters, for disposition. No extension of the period for which a carnet is valid shall be granted. **[TDs 51868, 53336, 55978, 69-146, 84-213, 89-1.]**

§ 10.38 Exportation.

(a) Articles entered under Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202) may be exported at the port of entry or at another port. An application on Customs Form 3495 shall be filed in duplicate with the district director of Customs a sufficient length of time in advance of exportation to permit the examination and identification of the articles if circumstances warrant such action and, in such event, the applicant shall be notified on a copy of Customs Form 3495 where the articles are to be sent for identification. If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to Customs Form 3495, and the carnet shall be presented

for certification. [TDs 39073, 41884, 42052, 43751, 45559, 53336, 55915, 69–146, 84–213, 89–1.]

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on Customs Form 3495 shall be filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry. [TDs 51868, 69–146.]

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported. [TD 69–146.]

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter. [TDs 54038, 55915.]

(f) Whenever the circumstances warrant, and occasionally in any event, district directors shall cause the fact of exportation to be verified by the Office of Investigations in harmony with the procedures provided for in §§ 18.7 and 191.10 of this chapter. [TDs 55915, 83–212.]

(g) Upon the presentation of satisfactory evidence to the district director at the port at which samples were entered under subheading 9813.00.20, HTSUS or professional equipment or tools of trade were entered under subheading 9813.00.50, HTSUS, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation shall be suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure. [TDs 69–146, 89–1.]

§ 10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Chapter 98, Subchapter XIII, HTSUS, may be canceled in the manner prescribed in § 113.55 of this chapter. A completed reexportation counterfoil on a carnet establishes that the articles covered by the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of § 114.26 of this chapter. In the case of articles entered under subheading 9813.00.30, HTSUS, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the district director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the district director is satisfied that the articles were so destroyed as articles of commerce within the period of time during which the articles may remain in the Customs territory of the U.S. under bond (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with § 557, Tariff Act of 1930, as amended, and § 158.43 of this chapter. [TDs 40155, 40953, 43642, 45559, 48508, 53268, 53336, 53399, 55978, 69–146, 74–227, 84–213, 89–1.]

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the U.S. under bond. In addition, the district director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported. [TDs 40155, 84–213.]

(c) When articles entered temporarily, free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the U.S. Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles. [TDs 33049, 33202, 49658, 53268, 75–36.]

(d) (1) If any article entered under Chapter 98, subchapter XIII, HTSUS, except those entered under a carnet, has not been exported or destroyed in accordance with the regulations in this part within the period of time during which the articles may remain in the Customs territory of the U.S. under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the district director within 60 days after the date of the demand. [CIE 608/58. TDs 51868, 52033, 53336, 55915, 55978, 69–146, 75–36, 84–213, 89–1.]

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the district director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof of the exportation or destruction of the articles under conditions set forth in the Convention under which the carnet is issued. If such proof is not furnished within the 6-month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) *Demand for return to Customs custody.* When the demand for return to Customs custody is made in the case of merchandise entered under Chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and

tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties. **[TDs 74-227, 89-1.]**

(e) If there has been default with respect to all the articles covered by the bond and a written petition for relief is timely filed as provided in part 172 of this chapter, it shall be transmitted to Headquarters, U.S. Customs Service with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation. If the full amount of liquidated damages demanded does not exceed $50,000 and the district director is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the district director may cancel the liability for the payment of liquidated damages as follows: **[TDs 52033, 52454, 53336, 53919, 55978, 70-249, 73-308, 75-36, 89-1.]**

(1) If evidence is furnished which satisfies the district director that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages. **[TD 70-249.]**

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the U.S. under bond, upon the payment of such lesser amount as the district director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the district director is satisfied that the delay in exportation or destruction was for the benefit of the U.S. or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person. **[TDs 52454, 70-249, 84-213.]**

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the U.S. under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the district director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the district director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation took place after the exportation which it is intended to establish. **[TDs 52454, 53268, 69-146, 70-249, 84-213.]**

(4) Upon the payment of an amount equal to double the duty which would have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in § 10.31(f), if such amount is determined to be less than the full amount of the bond. **[TDs 52454, 53336, 55915, 71-70.]**

(f) If there has been compliance with the terms of the bond with respect to part of but not all the articles covered thereby and a written petition for relief is filed as provided in Part 172 of this chapter, and if that part of the liability for liquidated damages which represents double the duty or 110 percent of the duty, as required under § 10.31(f), on the articles in respect of which there has been a default does not exceed $50,000, the district director may cancel the total liability for payment of liquidated damages in any amount upon the payment of an amount equal to double the duty or 110 percent of the duty, as appropriate, on the articles in respect of which the default occurred, or, under the circumstances enumerated in subparagraph (1), (2), or (3) of paragraph (e) of this section, upon payment of such lesser amount as the district director may deem appropriate, provided the district director is satisfied that the importation was properly entered under Chapter 98, Subchapter XIII, HTSUS and that there was no intent to defraud the revenue or delay the payment of duty. **[TDs 52454, 52721, 53336, 53919, 55915, 55978, 70-249, 71-70, 73-308, 75-36, 89-1.]**

(g) If the petitioner is not satisfied with the district director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the regional commissioner of Customs with a full report on the case. **[TDs 52033, 52454, 52721, 75-36.]**

§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with § 10.38. **[TDs 49658, 53336, 53399.]**

(b) If any article entered under Chapter 98, Subchapter XIII, HTSUS is not exported or destroyed within the period of time during which the articles may remain in the Customs territory of the U.S. under bond (including any lawful extension), the district director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the district director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs Service or, in appropriate cases, the district director on the application. **[CIE 747/38. TDs 46628, 47042, 48508, 50000, 51868, 53336, 53399, 55978, 84-213, 89-1.]**

International Traffic

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in Part 123 of this chapter. **[TDs 52259, 53336, 53505, 69-146, 70-121.]**

(b) [Reserved]

(c) Foreign-owned aircraft arriving in the U.S. shall be subject to the treatment provided for in Part 122 of this chapter, unless entered under the provisions of §§ 10.31, 10.183 or of paragraph (d) of this section.

(d) Any foreign-owned vehicle, aircraft, or undocumented boat brought into the U.S. for the purpose of carrying merchandise or passengers between points in the U.S. for hire or as an element of a commercial transaction, except as stated in the parenthetical matter in paragraph (b) of this section, is subject to treatment as an importation of merchandise from a foreign country and a regular entry therefor shall be made. The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). **[TDs 49658, 51868, 52259, 79–160, 88–12.]**

(e) [Reserved]

(f) Material for the maintenance or repair of international cables under the high seas, if requiring storage in special tanks for preservation, may be placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the U.S. but not brought on shore in the U.S. shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the U.S. but brought on shore in the U.S., only that part of the cable in the U.S. between the point of entry into the territorial waters of the U.S. and the first point of support on land in the U.S. shall be admitted without the payment of duty. (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

(a)(1) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as "instruments of international traffic" within the meaning of § 322(a), Tariff Act of 1930, as amended. The Commissioner of Customs is authorized to designate as instruments of international traffic, in decisions to be published in the weekly ***Customs Bulletin,*** such additional articles or classes of articles as he shall find should be so designated. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section. **[TDs 55078, 55981, 55978, 69–146, 72–149, 72–335, 73–48.]**

(2) Repair components, accessories, and equipment for any container of foreign production which is an instrument of international traffic may be entered or withdrawn from warehouse for consumption without the deposit of duty if the person making the entry or withdrawal from warehouse files a declaration that the repair component was imported to be used in the repair of a container of foreign production which is an instrument of international traffic, or that the accessory or equipment is for a container of foreign production which is an instrument of international traffic. The district director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.[35] **[TDs 71–139, 85–123.]**

(3) As used in this section, "instruments of international traffic" includes the normal accessories and equipment imported with any such instrument which is a "container" as defined in Article 1 of the Customs Convention on Containers.

(b) The reexportation of a container, as defined in Article 1 of the Customs Convention on Containers, which has become badly damaged, shall not be required in the case of a duly authenticated accident if the container (1) is subjected to applicable import duties and import taxes, or (2) is abandoned free of all expense to the Government or destroyed under Customs supervision at the expense of the parties concerned, following the procedure outlined in § 158.43(c) of this chapter. Any salvaged parts and materials shall be subjected to applicable import duties and import taxes. Replaced parts which are not reexported shall be subjected to import duties and import taxes except where abandoned free of expense to the Government or destroyed under Customs supervision at the expense of the parties concerned. **[TDs 69–146, 89–1.]**

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond on Customs Form 301, containing the bond conditions set forth in § 113.66 of this chapter. The required application may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see Part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the carnet. If the container is listed on the Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies: **[TDs 66–29, 71–70, 74–227, 84–213, 86–118.]**

(1) When the application is filed before the fact of approval of the applicant's bond has been established, the applicant must submit with the application, or the Customs officer to whom the application is made must obtain, evidence that a current bond is on file at another port. That evidence may consist of a certified copy of the bond, or any other evidence which will satisfy the Customs officer to whom the application is made that a current bond is on file at another port.

(2) If the application is filed after the fact of approval of the applicant's bond has been established, a certified copy of that bond need not be filed at the port of release. Upon determination by the appropriate Customs officer that the

[35] "Substantial containers and holders, if products of the U.S. (including shooks and staves of U.S. production when returned as boxes or barrels containing merchandise), or if of foreign production and previously imported and duty (if any) thereon paid, or if of a class specified by the Secretary of the Treasury as instruments of international traffic, and repair components for a particular container of foreign production which is an instrument of international traffic * * * Free" (Item 808.00, Tariff Schedules of the United States.)

fact of approval of the applicant's bond has been established, and the bond has not been subsequently discontinued, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate Customs officer at the port at which the instruments of international traffic are to be released will determine whether or not the fact of approval of the applicant's bond has been established. If the approval has not been established, the Customs officer with whom the application has been filed will advise the applicant of the nature of the evidence required to establish the fact that a current bond is on file at another port.

(d) If an instrument of foreign origin, or of U.S. origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the U.S., or is otherwise withdrawn in the U.S. from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. An instrument of U.S. origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under this section shall not be subject to entry or the payment of duty if it is so diverted or otherwise withdrawn. **[TD 69–144.]**

(e) The person who filed the application for release under paragraph (a)(1) of this section shall promptly notify a district director at a port of entry in the U.S. as defined in § 401(k), Tariff Act of 1930, as amended, (1) that the container is to be abandoned or destroyed, as described in paragraph (b) of this section, or (2) that the instrument is the subject of a diversion or withdrawal as described in paragraph (d) of this section, in which event he shall file with the district director a consumption entry for the instrument and pay all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal. **[TD 69–146.]**

(f) Except as provided in paragraph (i) of this section, no part of this section precludes (1) the use of an instrument in picking up and delivering loads at intervening points in the U.S. while en route between the port of arrival and the point of destination of its imported cargo, (2) such use of the instrument while en route from such point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, or (3) such use of a "container", as defined in Article 1 of the Customs Convention on Containers (see paragraph (a)(3) of this section), which arrived empty while en route between the port of arrival and a point where export cargo is to be loaded or from that point to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, provided such point-to-point traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic. Such use does not constitute a diversion to unpermitted point-to-point local traffic within the U.S. or a withdrawal of an instrument in the U.S. from its use as an instrument of international traffic under this section. **[TDs 69–216, 72–2.]**

(g) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with § 606, Tariff Act of 1930.

(h) When an instrument of international traffic, as provided in paragraph (a) of this section, is returned to the U.S. and released in accordance with the provisions of that paragraph, any repairs which may have been made to the instrument while it was abroad are not subject to entry or the payment of duty whether the instrument is of foreign or domestic manufacture, whether it left the U.S. empty or loaded, and whether or not the repairs made abroad were in contemplation when the instrument left the U.S. **[TD 69–146.]**

(i) Containers and other articles designated as instruments of international traffic in accordance with this section are nevertheless subject to the application of the coastwise laws of the U.S., with particular reference to § 883, title 46, United States Code (see § 4.93 of this chapter). (Sec. 14, 67 Stat. 516, Sec. 623, 46 Stat. 759, as amended; 19 U.S.C. 1202, 1322, 1623) **[TD 69–146.]**

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

(a) The holders and containers described in this section may be released without entry or the payment of duty, subject to the provisions of this section. **[TD 56542.]**

(b) In the case of serially numbered holders or containers of U.S. manufacture for which free clearance under subheading 9801.00.10, HTSUS is claimed, the owner shall place thereon the following markings: (1) 9801.00.10, unless the holder or container has permanently attached thereto the manufacturer's metal tag or plate showing, among other things, the name and address of the manufacturer who is located in the U.S. (2) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container. (3) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9801.00.10 * * * Zenda * * * 2468.

(c)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (c)(2) of this section for which free clearance under the second provision in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 9803.00.50

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9803.00.50 * * * 10-1-366-63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 18,120 kilograms, for which duty-free entry is requested under either the first or

the second proviso in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated. **[TDs 86–13, 89–1.]**

(d) The prescribed markings shall be clear and conspicuous, that is, they shall appear on an exposed side of the holder or container in letters and figures of such size as to be readily discernible. The markings will be stricken out or removed when the holders or containers are taken out of service or when ownership is transferred, except that appropriate changes may be made if a new owner wishes to use the holders and containers under this procedure.

(e) The owner shall keep adequate records open to inspection by Customs officers, which shall show the current status of the serially numbered holders and containers in service and the disposition made of such holders and containers taken out of service.

(f) Nothing in this procedure shall be deemed to affect:

(1) The requirements for outward or inward manifesting of such holders or containers. The manifests will show for each holder or container its markings as provided for herein.

(2) The requirements of the Department of Commerce on exportation with respect to the filing of "Shipper's Export Declaration," Form 7525–V.

(3) The treatment of articles covered herein under the coastwise laws of the U.S., with particular reference to § 883, Title 46, United States Code.

(g) If the holder or container and its contents are to move in bond or under cover of a TIR carnet (see Part 114 of this chapter) from the port of arrival intact, the holder or container shall appear on the inward foreign manifest so as to be related to the cargo contained therein and will be released under this procedure at a subsequent port. If the holder or container is to move in bond or under cover of a TIR carnet from the port of arrival not intact with its contents, the holder or container may appear on the inward foreign manifest separate from and not related to the cargo contained therein and will be released under this procedure at the port of arrival before it moves forward and will not appear on the in-bond document. **[TD 71–70.]**

(h) A continuous bond containing the conditions set forth in § 113.66 of this chapter shall be filed with the district director. If the conditions are violated the district director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with § 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond. **[TD 84–213.]**

Articles for Institutions

§ 10.43 Duty-Free status.

(a) The district director may, at his discretion, require appropriate proof of duty-free status for articles for institutions claimed to be exempt from duty under subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, HTSUS (19 U.S.C. 1202).

(b) Appropriate proof may be a copy of the charter or other evidence of the character of the institution for the use of which the articles are imported. **[TDs 29995, 34980, 37938, 38893, 39998, 45369, 52990, 53087, 53336, 55132, 55758, 55978, 67–108, 71–139, 74–227, 85–123, 89–1.]**

§ 10.44 Reserved TD 85–123.

§ 10.46 Articles for the U.S.

Pursuant to subheadings 9808.00.10 and 9808.00.20, HTSUS books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the U.S. or for the use of the Library of Congress, shall be admitted free of duty upon compliance with §§ 10.43–10.45, or upon the written request of the head of the bureau or executive department concerned. **[TDs 38328, 52542, 54971, 55978, 67–108, 89–1.]**

§ 10.47 Scientific specimens.

There shall be filed in connection with an entry covering any articles claimed to be free under subheading 4705.00.00, HTSUS a declaration of the importer of record stating that the subject articles are imported for public or private scientific collection for exhibition or other educational or scientific use as the case may be and are not for sale or other commercial use. **[TD 67–108.]**

Works of Art

§ 10.48 Engravings, drawings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9701.90.00, 9702.00.00, and 9703.00.00, HTSUS shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the appraiser is satisfied that such statement is not necessary to a proper determination of the facts. **[TDs 38261, 39083, 41263, 42428, 55132, 55978, 67–108, 89–1.]**

(b) The following evidence shall be filed in connection with the entry: **[TDs 36330 (Q. 63), 36725, 41263, 42428, 53399, 54118, 54183, 55132, 67–108, 70–59.]**

(1) A declaration in the following form by the artist who produced the article, showing whether it is original, or, in the case of sculpture, the original work or model or one of the first ten castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer of certain works of art, namely _____ covered by the annexed invoice dated _____: that any mosaics included in that invoice are originals; that any sculptures or statuary included in that invoice are the original works or models or 1 of the first 10 castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(2) A declaration of the seller or shipper giving the information specified in subparagraph (1) of this paragraph, if it be shown that it is impossible to produce the declaration of the artist. **[TD 54183.]**

(c) The declaration of the artist, or the declaration of the seller or shipper in lieu thereof, may be waived upon a satisfactory showing that it is impossible to produce either, but the declaration of the importer shall be required in all cases. **[CD 280. TDs 38089, 46258, 54183.]**

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the district director. **[TDs 53319, 55132.]**

(e) In the case of articles claimed to be free under subheading 9701.90.00, HTSUS the district director may require proof of the character of the article, including, when necessary, certificates from curators or other recognized authorities on art, that the imported article represents some school, kind, or medium of the free fine arts. **[TDs 55132, 55978, 88–79.]**

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under Chapter 98, Subchapter XII, HTSUS a declaration by a qualified officer of the institution on Customs Form 3325, and a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Claim for free entry under schedule 8, part 5B may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody. **[TDs 30164, 38082, 42917, 48690, 52488, 53336, 54118, 55132, 55978, 84–213, 89–1.]**

(b) The district director may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles. The society or institution shall file, within 6 months after the date of filing the entry, any document or proof demanded by the district director in connection with the entry. **[TDs 37034, 38992, 84–213.]**

(c) Articles entered under subheading 9812.00.20, HTSUS may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer. **[TDs 42917, 55978, 89–1.]**

(d) If any of the articles accorded free entry under Chapter 98 Subchapter XII shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such part, the amount of the duties shall be collected immediately by the district director at the port of entry and deposited as duties. If the articles are exported or destroyed under Customs supervision within such 5-year period, the liability under the bond shall be treated as terminated. **[TDs 48508, 49722 (2), 53336, 55978, 89–1.]**

§ 10.50 [Reserved TD 87–75.]

§ 10.52 Painted, colored or stained glass windows for religious institutions.

When painted, colored, or stained glass windows or parts thereof, are claimed free of duty under subheading 9810.00.10, HTSUS (19 U.S.C. 1202), the district director may, at his discretion, require appropriate proof that the importation was designed by, and produced by or under the direction of, a professional artist, and that it is for the use of an institution established solely for religious purposes. **[TDs 35462, 53268, 54201, 54513, 55758, 55978, 85–123, 89–1.]**

§ 10.53 Antiques.

(a) Articles accompanying a passenger and entitled to entry under the passenger's declaration and entry, or articles entered under an informal entry which are claimed to be free of duty under subheading 9705.00.00 or 9706.00.00, HTSUS may be admitted free of duty upon the execution of a declaration on the face of the entry provided that the passenger or person filing the informal entry is the owner of the articles and that they are for his personal use and not for sale or other commercial use and provided the Customs officer concerned is satisfied that the articles are of the requisite age. **[TDs 53268, 55978, 66–186, 70–59, 89–1.]**

(b) Antiques, of the age prescribed by subheading 9705.00.00 and 9706.00.00, HTSUS or admitted under the provisions of paragraph (e) of this section, shall be admitted free of duty though repaired or renovated. If, however, an antique has been repaired with a substantial amount of additional material, without changing the original form or shape, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of a feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in subheading 9705.00.00 and 9706.00.00, HTSUS the entire article shall be excluded from free entry under items 766.20 and 766.25, Tariff Schedules of the United States. **[TDs 37394, 39024, 41986, 42624, 43052, 44423, 44751, 45257, 55978, 56066, 82–148, 89–1.]**

(c) Except for furniture admitted under the provisions of paragraph (e) of this section, furniture claimed to be free of duty under subheading 9705.00.00 and 9706.00.00, HTSUS may be entered for consumption at any port of entry within the customs territory of the U.S. Furniture as used in this section of the regulations is defined as moveable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accomodation. This definition embraces most articles claimed to be free of duty as antiques. **[TDs 44165, 44240, 44241, 53399, 55132, 55978, 56402, 66–186, 82–148, 89–1.]**

(d) A claim for the free entry of an article under subheading 9705.00.00 and 9706.00.00, HTSUS on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from Customs custody or it has been

found upon examination before such release to be described in items 766.20 and 766.25, Tariff Schedules of the United States. **[TDs 51608, 52084, 53175, 55978, 89–1.]**

(e) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521. *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age,

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3-177) is filed at the time of entry with the district director of Customs who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraph (a) of this section. **[TDs 44522, 55978, 56–186, 82–148, 84–149.]**

(f) The additional duty U.S., shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under subheadings 9705.00.00 and 9706.00.00, HTSUS, if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under subheadings 9705.00.00 and 9706.00.00, HTSUS, is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun. **[CD 95, 428. TDs 44348, 44165, 44522, 55978, 78–46, 84–149, 89–1.]**

(g) The additional duty provided for in additional U.S. Note 2, Chapter 96, HTSUS, shall not be assessed if the importer established by evidence satisfactory to the district director that the article was not imported for sale. In the case of any article imported in a passenger's baggage or entered under an informal entry, the Customs officer concerned may accept the statement of the owner that the article was not imported for sale if he is satisfied of the truth of such statement. (Sec. 481, 46 Stat. 719, Sch. 7, pt. 11B, hdnote. 2, 77A Stat. 890; 19 U.S.C. 1481, 1202 (Sch. 7, pt. 11B, hdnote. 2)) **[TDs 44201, 46989, 48134, 55978, 56066, 56402, 66–186, 78–46, 84–149, 87–75, 89–1.]**

§ 10.54 Gobelin and other hand-woven tapestries.

Pursuant to subheading 5805.00.10, HTSUS, Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued over $215.00 per square meter. **[TDs 44201, 46989, 55132, 55978, 87–75, 89–1.]**

Vegetable Oils

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be classifiable under subheading 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.0020, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, HTSUS, if denatured abroad or under Customs supervision after importation but before release from Customs custody, at the request and expense of the importer, by a formula prescribed by Headquarters, U.S. Customs Service, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes. **[TDs 29957, 29976, 30006, 32056, 32807, 32859, 33827, 34215, 39491, 39519, 42726, 43274, 44107, 44550, 48114, 48255, 48613, 49324, 50622, 51994, 55978, 89–1.]**

(b) Each cask or package of oil claimed to have been before importation denatured or otherwise rendered unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) Formulas prescribed by Headquarters, U.S. Customs Service, except proprietary mixtures, will be circulated to all Customs officers and will appear as abstracts of U.S. Customs Service decisions published in the weekly ***Customs Bulletins.*** Proprietary mixtures approved by the Commissioner of Customs will not be published but appropriate notice of their approval will be given to all Customs officers. **[TDs 49324, 50622, 51994, 55131, 55335.]**

(d) The Headquarters, U.S. Customs Service will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The district director may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the district director whether or not such denaturant is suitable for rendering the oil unit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured. **[TD 87–75.]**

Potatoes, Corn or Maize

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under subheading 0701.10.00, as seed corn (maize) under subheading 1005.10, HTSUS, shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued. **[TDs 52004, 52798, 55978, 89–1.]**

Bolting Cloths

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under subheading 5911.20.20, HTSUS, the cloth shall be indelibly marked from selvage to selvage at intervals of not more than 10.16 centimeters with "bolting cloth expressly for milling purposes" in block letters 7.62 centimeters in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered

only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium. **[TDs 87–75, 89–1.]**

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

Withdrawal of Supplies and Equipment for Vessels

§ 10.59 Exemption from customs duties and internal-revenue tax.

(a) A vessel shall not be considered to be actually engaged in the foreign trade, or in trade between the Atlantic and Pacific ports of the U.S., or between the U.S. and its possessions, or between Hawaii and any other part of the U.S. or between Alaska and any other part of the U.S., as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax pursuant to § 309(a), Tariff Act of 1930, as amended, unless it is— **[CAD 165; CIE 961/40; TDs 9776, 9787, 18379, 23237, 45047, 46522, 48243, 48447(12), 48788, 49815, 50380(5), 51667(4), 53999, 55374, 89–1.]**

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the U.S., or between a port in a possession of the U.S. and a port in the U.S. or in another of its possessions, or between Hawaii and any other part of the U.S. or between Alaska and any other part of the U.S.;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in § 309(a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in § 309 and agreeing to notify the district director if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade. **[CD 199; CADs 174, 569; TDs 50130, 53336, 53983.]**

(b) A withdrawal of articles may not be made under § 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades. **[TD 53983.]**

(c) The classes of articles which may be withdrawn as provided for by § 309, Tariff Act of 1930, as amended, include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of General Rule of Interpretation 5. **[CAD 165. CD 377. TDs 53983, 55653, 55978, 89–1.]**

(d) For the purpose of allowing the privileges of § 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60–10.64 which may be applied to aircraft. **[TDs 48243, 53336, 53983.]**

(e) Vessels of the U.S. documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under § 309 of the Tariff Act of 1930, as amended, if the district director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the U.S. without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the district director of a special written application, in triplicate, on Customs Form 5125, of the withdrawer, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter executed by the withdrawer. Such application shall be filed with Customs Form 7506 or 7512, as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the district director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a Customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the district director is satisfied that all of them have been consumed on board, or landed under Customs supervision, and takes up the original application. (The withdrawer shall retain the triplicate copy as evidence of consumption on board or landing under Customs supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption. Exemption from internal-revenue tax on distilled spirits, alcohol, wine, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery, and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service. **[CCL 47/57. TDs 51667 (4), 53336, 53935, 53983, 54541, 77–25, 84–213, 89–1.]**

(f) Pursuant to § 309(d) of the Tariff Act of 1930, as amended, the Department of Commerce has found and advised the Secretary of the Treasury of the foreign countries which allow privileges to aircraft registered in the U.S. substantially reciprocal to those described in §§ 309 and 317 of

the Tariff Act of 1930, as amended. Advices also have been received of changes and limitations of privileges allowed. In accordance with these advices, Treasury decisions are issued extending to the aircraft of foreign countries free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those countries to aircraft registered in the U.S. or making changes in such privileges on the basis of new findings. Listed below by countries are the Treasury decisions issued pursuant to such findings which are currently in effect: **[TD 70–73.]**

(Secs. 309, 317, 46 Stat. 690, as amended, 759 (19 U.S.C. 1309, 1317)).

Country	Treasury Decisions	Exceptions if any, as noted—
Argentina	54925 (1)	Applicable only as to aircraft equipment, spare parts, and supplies other than fuel and lubricants.
Australia	54747 (1)	Not applicable to ground equipment.
Austria	80–68	
Bahamas	52798 (3)	
Belgium	52846 (2)	
Bermuda	49944 (4)	
Brazil	53281 (2)	
Canada	69–149 69–245	Not applicable to ground equipment during period May 1 to September 16, 1969, inclusive.
China*	82–91	
Chile	66–128 (2)	
Colombia	70–107 (1)	
Costa Rica	53658 (1)	
Czechoslovakia	70–107 (1)	
Dahomy	71–215	
Denmark	51966 (3)	
Dominican Republic	54522 (1)	
Ecuador	52510 (4)	
Egypt	74–3,85–141	
El Salvador	54675 (1)	
Finland	69–120 (2)	
France	67–96 (1)	Not applicable to tobacco products under § 317 of the tariff act. Not applicable to ground equipment.
Federal Republic of Germany.	69–150	Not applicable to ground equipment.
Greece	54847 (1)	
Guyana	78–28	
Honduras	71–154	
Iceland	67–265 (1)	
India	55155 (1)	
Iran	75–254	
Ireland	55291 (1)	
Israel	52831 (3)	
Italy	69–223	Not applicable to ground equipment.
Ivory Coast	71–215	
Jamaica	70–250	
Japan	53550 (1), 88–45	Not applicable to ground support equipment as of August 1, 1986.
Jordan	74–102	
Kenya	71–102	Applicable only as to aircraft fuels and lubricants.
Lebanon	53902 (1)	
Mexico	54506 (5)	
Morocco	75–254	
Netherlands	52494 (2)	
Netherlands Antilles	71–211	
New Zealand	73–52	Not applicable to ground equipment.
Nicaragua	54640 (1)	
Norway	51966 (3)	
Pakistan	55416 (1)	
Panama	55453 (1)	
Peru	52911 (2)	
Poland	72–153	
Portugal	68–107 (1)	Not applicable to ground equipment.
Republic of Korea	71–140	
Republic of the Philippines.	71–197	
Romania	75–35	
Saudi Arabia	73–307	Applicable only as to aircraft fuels, lubricants, and consumable technical supplies.
Senegal	71–215	
South Africa	69–162	Not applicable to ground equipment.
Spain	54522 (2)	
Sweden	51966 (3)	
Switzerland	56047	
Tanzania	71–102	Applicable only as to aircraft fuels and lubricants.
Thailand	71–138	Not applicable to ground equipment.
Trinidad and Tobago	56441 (1)	
Uganda	71–102	Applicable only as to aircraft fuels and lubricants.
Union of Soviet Socialist Republics.	67–123 (1)	
United Kingdom	69–176	Not applicable to ground equipment.
Venezuela	55425 (1)	
Yugoslavia	71–138	
Taiwan	70–107 (1), 82–91	Not applicable to ground equipment.

*See also Taiwan

Note: For FR citations affecting § 10.59, see List of CFR Sections Affected.

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on Customs Form 7506 (Warehouse Withdrawal Conditionally Free of Duty). Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous Customs custody elsewhere than in a bonded warehouse shall be made on Customs From 7512, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is

proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known. **[CIEs 412/48, 369/58, 471/58. TDs 38536, 44477, 48788, 51567, 52965, 53792, 53935, 53983, 73-175, 73-312.]**

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section. **[TD 53336.]**

(d) When the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading. Three copies of the manifest on Customs Form 7512, in addition to six copies of the withdrawal on Customs Form 7506, shall be required. The procedure shall be the same as that prescribed in § 144.37 of this chapter (the six copies of Customs Form 7506 taking the place of the entry copies of Customs Form 7512). **[CCL 23/56. TDs 18922, 48495, 53983, 73-175.]**

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed, except that the bond required shall be on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed, except that the withdrawal when filed shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. There shall be such examination of the articles as may be necessary to satisfy the district director that they are subject to the privileges of § 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct. **[CCL 23/56. CIE 448/58. TDs 51567, 52965, 55653, 84-213.]**

(g) A withdrawal under § 10.59(e) shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. **[TDs 53935, 54101, 84-213.]**

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under § 309 or 317, Tariff Act of 1930, as amended, the district director in his discretion may permit the articles to be so transferred under Customs supervision under a permit on Customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the district director. (Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309) **[TDs 52965, 53935, 55653.]**

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the district director shall issue a permit on Customs Form 7506 or 7512. (Sec. 309(a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a)) **[TDs 44477, 51567, 53174, 53448, 54485, 55653.]**

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under § 309, Tarrif Act of 1930, as amended.* When all the bunker-fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under § 309 of the Tariff Act of 1930, as amended, at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information: **[CIEs 369/58, 471/58. TDs 53448, 53982, 55653, 67-25, 69-99, 82-204.]**

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number or name and, if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name and location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a)(3) and (4) of this section shall be deemed to be inapplicable.

(b) If a blanket free withdrawal of bunker fuel oil is filed, to comply with Bureau of the Census requirements the withdrawal on Customs Form 7506 shall be endorsed "Estimated Withdrawals" and limited to the aggregate quantity and value of fuel oil which it is estimated will be physically removed from Customs bond during the calendar month in which the withdrawal is filed for lading on vessels entitled to duty-free vessel supplies under § 309 of the Tariff Act of 1930, as amended. **[TD 69-99.]**

(c) (1) As an incident of the delivery of fuel oils classifiable at different rates of duty to a vessel or vessels under § 309 of the tariff act, the district director of Customs may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the oils in the delivering conveyance or in other suitable facilities after withdrawal from the bonded tanks, upon the condition that, to the extent of the amount of oil withdrawn classifiable at the higher rate, duty at the higher rate will be paid on any portion of the blended fuel oil not delivered within a reasonable time to a qualified vessel. The withdrawer shall be required to file a withdrawal for consumption for the excess quantity withdrawn. For example, if the quantity withdrawn consists of 1,500 barrels of bunker C fuel oil classifiable at the rate of one-eighth cent per gallon and 500 barrels of diesel oil classifiable at the rate of one-fourth cent per gallon but only 1,400 barrels of the blended oil are actually laden as fuel

supplies on qualified vessels, withdrawals for consumption are required for 500 barrels of diesel oil at the higher rate and for 100 barrels of bunker C fuel oil at the lower rate. **[TDs 53982(1), 69–99.]**

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received. **[TD 82–204.]**

(d) Fuel oil withdrawn as vessel supplies at one port may be laden at another port on a vessel or vessels entitled to the free withdrawal privileges of § 309 of the tariff act, under procedures prescribed in this section, provided the movement to the receiving vessel or vessels is under the bond of a qualified carrier as described in § 18.1(a) of this chapter. In such cases, the provisions of § 10.60(d) of this chapter shall be deemed inapplicable. **[TD 69–99.]**

(e) If a vessel not entitled to duty-free withdrawal of supplies from Customs bonded warehouses under § 309 of the Tariff Act of 1930, as amended should be supplied with fuel oil from a Customs bonded tank described in paragraph (a) of this section because of an emergency, a duty paid withdrawal therefor shall be filed on the first day that the customhouse is open for the general transaction of business after the day on which the oil is laden on the using vessel. If there should be willful or repeated instances of late filing of a duty-paid withdrawal in such cases, the district director of Customs shall require a duty-paid withdrawal to be filed prior to the removal of fuel oil from the bonded tank. **[TDs 69–99, 82–204.]**

(f) When the procedures prescribed in this section are followed, representatives of the regional commissioner of Customs will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil. The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry. (Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309) **[TDs 69–99, 79–159.]**

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document. **[TDs 69–177, 73–175, 82–204.]**

§ 10.63 Landing of supplies and stores from receiving vessel in the U.S.

Supplies or stores laden on a vessel duty and tax free under § 309, Tariff Act of 1930, as amended, may be landed under Customs supervision under proper permit, the same as if they had been laden in a foreign country. See §§ 4.39 and 23.4 of this chapter. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original withdrawal under § 309, Tariff Act of 1930, as amended, the landed articles shall be treated as an importation from a foreign country. (Sec. 309(a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a)) **[CD 199; TDs 48399, 48788, 51567, 54485, 55653, 89–1.]**

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the district director within 30 days after lading, except as provided in this section. If the vessel is not operated by the U.S. and proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo for carriage in a class of trade specified in § 309, Tariff Act of 1930, as amended, the bond may be credited or canceled upon the filing with the district director at the port of withdrawal within 3 months after the date of withdrawal of a proper declaration as prescribed below. The declaration shall be executed by one of the following who has knowledge of the facts: **[CCL 47/57; TDs 51567, 53268, 53983, 54485, 54688, 55374, 55653, 84–213.]**

(1) The operations manager or port captain for the vessel on which the articles are laden but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are laden. The declaration shall be in substantially the following form:

I, _____ (Operations manager, port captain, master, or other officer) of the vessel _____ declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles described below covered by withdrawal No. _____, filed at _____ (Name of port), the vessel then proceeded in ballast to _____ (Name of port) to lade cargo or passengers; that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when it so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____

(If no exception, note "None")

1. Foreign Trade.
2. Trade between Atlantic and Pacific ports of the U.S., when such trade is not prohibited by coastwise laws.

3. Trade between the U.S. and any of its possessions, when such trade is not prohibited by coastwise laws.
4. Trade between Alaska or Hawaii and any other part of the U.S., when such trade is not prohibited by coastwise laws.

Description of articles:

_____

_____

_____

_____

_____
(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the district director, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or both, involved in a single lading is less than $100. (Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309) **[TDs 54101, 54485.]**

§ 10.64a [Reserved TD 87-75.]

§ 10.65 Cigars and cigarettes.

(a) Imported cigars and cigarettes in bonded warehouse or otherwise in Customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under § 317, Tariff Act of 1930, as amended, for consumption beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the U.S.; or (3) on vessels of war or other governmental activity. **[TDs 44477, 54393, 67-193, 89-1.]**

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules, nor shall it be granted to aircraft of foreign registry of a country for which there is not in effect a finding and advice by the Department of Commerce under § 309(d), Tariff Act of 1930, as amended, that such country allows privileges to aircraft registered in the U.S. substantially reciprocal to those described in § 317, Tariff Act of 1930, as amended. See § 10.59(f). **[TD 70-73.]**

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under § 309(a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the U.S. Government.

(2) When a shipping case containing cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes. In the case of imported cigars and cigarettes so packed, only one unit from each shipping case shall be opened for examination, unless the district director of Customs shall deem it necessary for the protection of the revenue to examine a greater quantity. Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax. **[TDs 54393, 67-193, 89-1.]**

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used. **[TDs 53336, 82-204, 84-213.]**

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. If, at the time of such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted. **[TD 82-204.]**

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the withdrawing vessel or aircraft had proceeded beyond the 3 mile limit or the international boundary. (Sec. 317, 46 Stat. 696, as amended; 19 U.S.C. 1317)

Articles Exported for Exhibition, Etc.

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedures on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, HTSUS, there shall be filed: **[TDs 17202, 29950, 37305, 55978, 78-153, 87-75, 89-1.]**

(1) A certificate of exportation on Customs Form 3311; **[TD 74-242.]**

(2) A declaration of the importer on Customs Form 4455 for articles of either domestic or foreign origin; and **[TD 75-235.]**

(3) In the case of animals of foreign origin taken abroad for exhibition in connection with a circus or menagerie, a copy of an inventory of these animals filed prior to their leaving the country with the district director at the port of their departure. **[TDs 20819, 55978.]**

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the district director may accept other satisfactory evidence of exportation, or may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the production of such certificate or other evidence. **[TD 84-213, 87-75.]**

(c) Articles claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, HTSUS (19 USC 1202),

best copy available

may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if: **[TDs 53849, 55978, 75–235, 78–153, 89–1.]**

(1) Prior to the exportation of such articles, an application on Customs Form 4455 (accompanied by an appropriate inventory, when required by law or by the district director) is filed with a declaration thereon that:

(i) Any right to drawback of Customs duties with respect to that shipment was waived;

(ii) Any internal revenue tax due has been paid and no refund thereof will be sought; and

(iii) The merchandise was identified, registered, and exported in accordance with the regulations set forth in §§ 10.8 (d), (f), (g), and (h), governing the exportation of articles sent abroad for repairs, and

(2) Upon return, a duplicate Customs Form 4455 (with accompanying inventory where one was required) is filed.

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under subheading 9801.00.40, HTSUS, the following shall be required, irrespective of the value of the shipment: **[TDs 46295, 55978, 89–1.]**

(1) A certificate of exportation on Customs Form 3311; **[TD 74–242.]**

(2) A declaration by the foreign shipper in the same form as that prescribed in § 10.66(a)(2) but stating that such articles were sent from the U.S. solely for temporary scientific or educational use and describing the specific use to which they were put while abroad. **[TDs 53399, 54056, 54183.]**

(3) A declaration of the ultimate consignee in substantially the following form:

District No.____, Port of _____, District Director's Office, _____, 19____.

I, _____, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the U.S. on the _____ day of _____, 19____, by _____ (Actual shipper) address _____, for the account of _____, address _____ that they are returned to _____, address _____, for the account of _____, address _____ that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

_____
(Describe change in condition)

_____

_____
(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the district director may accept other satisfactory evidence of exportation. The district director may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under item 802.10, Tariff Schedules of the United States, an application on Customs Form 4455 (accompanied by an appropriate inventory when, in the discretion of the district director, such inventory is deemed necessary) was filed and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8 (d), (f), (g), and (h) governing the exportation of articles sent abroad for repairs, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate Customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a)(3) of this section. **[TDs 53849, 55978, 84–213.]**

Theatrical Effects, Motion-Picture Films, Commercial Travelers' Samples, and Tools of Trade [1]

§ 10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films (including motion-picture films taken aboard a vessel for exhibition only during an outward voyage and returned for the same purpose during an inward voyage on the same or another vessel), commercial travelers' samples, and professional books, implements, instruments, and tools of trade, occupation, or employment (see § 148.53 of this chapter), of domestic or foreign origin, taken abroad may be returned without formal entry and without payment of duty if an exportation voucher from a carnet, when applicable, or an application on Customs Form 4455 was filed and the merchandise was identified as set forth in § 10.8, before exportation of articles. Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455 is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299; theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, the district director may require proof of exportation in those cases where the carnet or Customs Form 4455 does not reflect that these articles were exported under Customs supervision. In the case of commercial travelers' samples taken abroad for temporary use, except where exportation involves certification of a carnet, district directors may waive examination of the samples at the time of exportation. When motion-picture films are to be taken aboard a vessel for exhibition only during an outward voyage and are to be returned for the same purpose during an inward voyage on the same or another vessel, district directors may waive examination and supervision at the time of exportation. When theatrical scenery, properties, and effects are taken aboard in sealed carload lots by rail for temporary use, the cars must be sealed by U.S. Customs officers for entry at any Canadian or Mexican port where U.S. Customs officers are stationed. Application and examination before the time of exportation is waived if a Customs Form 4455 is filed with the U.S. Customs officer

[1] T.D. 75–41, 40 FR 6646, Feb. 13, 1975.

in the appropriate Canadian or Mexican port, and that officer examines the articles before they are released from foreign customs custody by the foreign customs officer. **[TDs 28471, 30524, 31602, 51810, 55555, 55779, 56427, 69-146, 75-41, 82-49, 82-116.]**

(b) When any such articles are to be returned to the U.S. from a contiguous foreign country in which a U.S. Customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by Customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the U.S. and removal of the seals by Customs officers. **[TD 37002.]**

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on Customs Form 4455 shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the Customs officer on the return of the samples from Canada. (R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (19 U.S.C. 66, 1202 (General Headnote 11, Tariff Schedules of the United States) 1624))

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists of samples taken to Great Britain and Ireland by commercial travelers of the U.S. under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552), shall be required in triplicate, verified by the affidavit of the commercial traveler before a Customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the U.S. and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the U.S. **[TDs 28645, 31136, 31537, 34421.]**

Animals and Birds

Cross Reference: For regulations with respect to recognition of breeds and purebred animals see 9 CFR Part 151.

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under subheading 0101.11.00, HTSUS, no claim for free entry shall be allowed in liquidation of the entry until the district director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for the breed. Importers are required by regulation of the Department of Agriculture to make application for a certificate of pure breeding to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on ANH Form 17-338 before the animal will be examined as required by 9 CFR 151.7. Application for the certificate must be executed by the owner agent, or importer and filed at a port of entry designated in the regulations of the Department of Agriculture for the importation of animals (9 CFR 92.3). However, applications for certificates for dogs (other than dogs for handling livestock regulated under 9 CFR 92.18) and cats may be filed either at a designated port of entry or at any other port where Customs entry is made. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the port at which examination is to be made by certificates of pedigree and transfer of ownership in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, such action shall constitute a waiver of any further claim to certification under such regulations. **[TDs 53336, 55681, 78-99, 87-75, 89-1.]**

(b) In the cases of cats and dogs arriving at Canadian border ports, Customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the U.S. by a passenger. At all airports, Customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival. (Sec. 486, 46 Stat. 725, as amended, sec. 101, 76 Stat. 72; 19 U.S.C. 1486; item 100.01, Tariff Schedules of the United States.) **[TDs 54120, 55681, 87-75.]**

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from Customs custody upon the furnishing by the importer of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of (1) a certificate of pure breeding issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from customs custody requires the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b). **[TDs 31147, 31518, 36468, 38011, 44754, 49882, 52111, 53336, 68-154, 84-213.]**

(b) Charges against the bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with the district director within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 113.42 of this chapter.) **[TDs 53336, 74-227, 84-213.]**

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(e) When a passenger arriving in the U.S. with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in his possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17-338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under subheading 0101.11.00, HTSUS, may be made on the passenger's baggage declaration if the value of the animals does not exceed $500. In such case the entry shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the district director of Customs on the basis of information before him finds that a bond with surety or a cash deposit is necessary to protect the revenue. **[TDs 68-79, 68-154, 78-99, 84-213, 89-1.]**

(f) Under conditions corresponding to those set forth in paragraph (e) of this section, dogs and cats having a value or not to exceed $250 that arrive unaccompanied by the importer may be entered on an informal entry (Customs Form 5119A (serially numbered)) or an entry summary (Customs Form 7501) under item 100.01, Tariff Schedules of the United States, without a deposit of estimated duty when supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter which may be without surety or cash deposit to the same extent and under the same conditions as provided in paragraph (e) of this section. The declaration required by § 10.70(a) shall be submitted in letter form. (Sec. 486, 46 Stat. 725, as amended, sec. 101, 76 Stat. 72; 19 U.S.C. 1486; item 100.01, Tariff Schedules of the United States.) **[TDs 68-79, 68-154, 78-99, 84-213, 87-75.]**

§ 10.72 [Reserved TD 87-75.]

§ 10.73 [Reserved TD 87-75.]

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under subheading 9801.00.90, HTSUS, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Animal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545. **[TD 89-1, 87-75.]**

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under subheading 9810.00.70, HTSUS (19 U.S.C. 1202), the district director may, at his discretion, require appropriate proof that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. That fact that an animal or bird may have been sent on approval shall not preclude free entry under subheading 9810.00.70, HTSUS when it is actually accepted as a part of the zoological collection and so exhibited. **[TDs 16576, 53399, 55978, 85-123, 89-1.]**

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of subheading 9817.70, HTSUS without reference to the U.S. Customs Service, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with. **[TDs 44467, 46255, 49199, 55978, 89-1.]**

Animals

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

Birds

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under subheading 9817.70, HTSUS shall be referred to the U.S. Customs Service for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) Reserved **[TD 82-145.]**

(d) Game animals and birds killed in foreign countries by residents of the U.S., if not imported for sale or other commercial purposes, may be admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on U.S. Fish and Wildlife Service Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required. **[TDs 52351, 86-118.]**

§ 10.77 [Reserved TD 89-1]

Products of American Fisheries

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port. **[TDs 49682, 49966, 55384, 87-75.]**

(b) An American fishery, within the meaning of subchapter XV of Chapter 98, HTSUS, is defined as a fishing enterprise conducted under the American flag by vessels of the U.S. on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof. **[TDs 53399, 55978, 89-1.]**

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an

American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the U.S. and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery. **[CD 219. CADs 132, 133, 124 Fed. Rep. 107. TDs 29143, 31223, 31534, 32138, 34188, 39494, 39822, 40089, 40725, 40728, 41057, 42137, 43988, 44124, 55978, 89–1.]**

§ 10.79 [Reserved TD 87–75.]

Salt For Curing Fish

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted. (§ 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be used on Customs Form 7506. **[TDs 39304, 53399, 53792, 73–175, 84–213, 89–1.]**

§ 10.81 Use in any district.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose in any district, but the evidence of use in such cases shall be submitted through the district director for the district where the salt was used. **[TD 53268.]**

(b) If desired, salt to be used in curing fish on shore in another district than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to a port in the district in which it is to be used, at which port it may be entered on Customs Form 7501 with Customs Form 7506 attached to show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter when necessary, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port. (Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (i)) **[TD 84–213, 87–75.]**

§ 10.82 [Reserved TD 87–75.]

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the district director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the district director may cancel the charges against the bond. The district director may require additional evidence in corroboration of the proof of use produced. **[TDs 84–213, 87–75.]**

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period. (Sec. 313 (e), (i), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (i))

Automotive Products

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as "Free (B)"] in the "Special subcolumn in Chapter 87, HTSUS, and must qualify as "Canadian articles" as defined in General Note 3(c)(iii)(A)(1). To claim exemption from duty under the Automotive Products Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a "Canadian article" for purposes of General Note 3(c)(iii)(A)(1). The Customs officer may accept as satisfactory evidence a certificate executed by the importer as set forth in paragraph (b) of the section, subject to any verification he may deem necessary. Alternatively, the Custom officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free Trade Agreement and implementing legislation (P.L. 100–449, 100 Stat. 418) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in Sections 10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is a "Canadian article":

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other

document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Canadian article":

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows:

_____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section shall not be accepted if the statements therein make it evident that the importation is not a "Canadian article" within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if (i) there is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary evidence which identifies the article to which the certificate pertains, (ii) the certificate is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and (iii) it clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to § 10.310(a), shall be subject to the requirements of sections 10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as "original motor-vehicle equipment" as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the district director of Customs is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the district director of Customs of the district where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture. **[TDs 56529, 67–83, 76–211, 89–1, 89–3.]**

Master Records, And Metal Matrices

§ 10.90 Master records and metal matrices.

(a) Consumption entries covering importations under subheading 8524.20, HTSUS, shall be filed at a port in the Customs district in which the factory where the articles will be used is located. **[TDs 55978, 89–1.]**

(b) The invoice filed with the entry shall contain or be supported by a detailed statement of the cost of production, in the country where made, of each master record or metal matrix covered thereby. **[TDs 53399, 53638, 53869.]**

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed for importations under this section. **[TD 84-213.]**

(d) Entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under Customs supervision, and that all sound records made with the use of such articles have been exported. **[TD 87-75.]**

§ 10.91–10.97 [Reserved TD 89-1.]

Fluxing Material

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores usable as a flux or sulphur reagent, mentioned in the provision for such ores in subheading 2603.00.00, HTSUS, shall include only ores which contain by weight not over 15 percent copper. **[TDs 46096, 55978, 89-1.]**

(b) [Reserved]

(c) There shall be filed in connection with the entry of such copper-bearing ores, either for consumption or warehouse, a declaration of the importer that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided. **[TDs 53268, 55978.]**

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with §§ 151.52 through 151.55 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay. **[TDs 55978, 73-175.]**

(e) The management of the smelting or converting plant shall file with the appropriate Customs officer at the port or ports where the entries are to be liquidated, a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores used for fluxing purposes for which free entry was claimed under the above-mentioned provision, together with copper content of such imported ores computed in accordance with the Government assay. If the quantity of ores used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes. **[TDs 53268, 55978, 87-75.]**

Ethyl Alcohol

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.

(a) If claim is made by an importer other than the U.S. or a governmental agency thereof for the classification of ethyl alcohol of 185 degrees or more of proof under subheading 2207.10.60, HTSUS, the importer or his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only.

(1) Customs shall release the alcohol upon deposit of estimated duty, if any, and without payment of the internal revenue tax, only upon receipt of an application on Alcohol, Tobacco and Firearms (ATF) form 2609 (5110.16) submitted by the proprietor of the distilled spirits plant and approved by the appropriate Alcohol, Tobacco and Firearms officer. The ATF form 2609 (5110.16) allows the transfer of the alcohol under internal revenue bond to the bonded premises of the proprietor's plant for nonbeverage use.

(2) Before release of the alcohol from Customs custody, the Customs officer shall prepare four copies of ATF form 236 (5110.27) when the alcohol is to be removed in packages, or five copies when the alcohol is to be removed by pipeline or by bulk conveyance. The ATF form 236 (5110.27) should be appropriately modified to show:

(i) Serial number and date of the ATF form 2609 (5110.16);

(ii) Customs port of entry and entry number;

(iii) Consignee;

(iv) Kind of spirits;

(v) Name of the importer;

(vi) Country of origin (manufacture or production);

(vii) Method of transfer;

(viii) Elements of bulk gauge (if any);

(ix) Quantity to be transferred;

(x) Customs seals used (if any);

(xi) Date of release; and

(xii) Signature and title of the Customs officer instead of the proprietor.

When shipments are made in tank cars or trucks, the Customs officer shall report details of the gauge of each car or truck separately. In the case of barrels, drums, or similar portable containers, he shall show details of the gauge on three copies of ATF form 2630 (5110.45). The Customs officer also shall note on ATF form 236 (5110.27) the rate of Customs duty paid and the rate which would have been applicable had the alcohol been imported for beverage purposes.[92] Upon compliance with Customs entry requirements and completion of the appropriate ATF forms, the Customs officer shall release the alcohol for transfer to the distilled spirits plant. The Customs officer shall retain one copy of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any); forward one copy of ATF form 236 (5110.27) to the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, at the address shown on ATF form 2609 (5110.16); and forward the original and remaining copy (or copies) of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any) to the Alcohol, Tobacco and Firearms officer at the distilled spirits plant.

(3) Before a shipment in a tank car or truck is released, a Customs officer shall seal all openings affording access to the alcohol with Customs seals in a manner which prevents unauthorized removal of the alcohol.

(4) When the distilled spirits plant is equipped with suitable dock facilities, the alcohol, subject to all requirements of the Customs laws and regulations, (i) may be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into locked empty storage tanks on the bonded premises of the distilled spirits plant; or (ii) may be transferred directly into empty storage tanks on the premises, if the tanks are equipped with suitable measuring devices for correctly indicating the actual contents and the outlets are locked. In all pipeline transfers, the alcohol shall be transferred under Customs supervision, gauged immediately by a Customs officer, and then released for deposit in the distilled spirits plant. The Customs officer shall report the details of the gauge for internal revenue purposes on ATF form 236 (5110.27). Copies of the form shall be distributed as prescribed in subparagraph (2) of this paragraph.

(b) If ethyl alcohol is to be withdrawn from Customs custody by the U.S. or any governmental agency thereof for its own use for non-beverage purposes, either before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of §141.102(d) of this chapter (when deposit of estimated duties or taxes is not required), an appropriate permit on ATF form 1444 (5150.33), shall be filed with the district director. The permit also may cover future withdrawals at that port, pursuant to appropriate entry in each case. The Customs officer who gauges the alcohol shall prepare three copies of a report of gauge on ATF form 2629 (5110.26). The alcohol then may be released for shipment to the governmental agency named in the permit, ATF form 1444 (5150.33). The Customs officer shall make the appropriate notation of the withdrawal on ATF form 1444 (5150.33), and shall state the permit number of the ATF form 1444 (5150.33) involved on each copy of ATF form 2629 (5110.26). The Customs officer shall retain the original of the ATF form 2629 (5110.26) with the permit on ATF form 1444 (5150.33), and shall forward one copy of ATF form 2629 (5110.26) to the governmental agency involved and one copy to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

(c) Paragraphs (a) and (b) of this section are not applicable to withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands. Provisions for the release free of tax of distilled spirits, denatured distilled spirits, and products containing denatured spirits produced and withdrawn in the Virgin Islands are found in subpart O of Part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 250, Subpart O).

(d) Upon completion of the application procedures outlined in this section, the entry shall be liquidated with the assessment of duty at the appropriate rate, if any, and without the assessment of internal revenue tax. **[TDs 78-329, 89-1.]**

U.S. Government Importations

§ 10.100 Entry, examination, and tariff status.

Except as otherwise provided for in §§ 10.101, 10.102, 10.104, 141.83(c)(8), 141.102(d), or elsewhere in this chapter, importations made by or for the account of any agency or office of the U.S. Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as are contained in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40 9808.00.50, 9808.00.60, 9808.00.70 or other subheadings in the Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202) providing for free entry, such importations are also subject to duty. **[TDs 52871, 53336, 53399, 53780, 54971, 55978, 71-139, 73-175, 77-23, 89-1.]**

§ 10.101 Immediate delivery.

(a) *Shipments entitled to immediate delivery.* Shipments consigned to or for the account of any agency or office of the U.S. Government, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of these regulations as shipments the immediate delivery of which is necessary within the purview of § 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)). **[TDs 71-139, 77-23.]**

(b) *Immediate delivery applications.* The shipments described in the preceding paragraph may be released upon the filing of immediate delivery applications on Customs Form 3461 as set forth in Subpart A of Part 142, of this chapter. Such applications may be limited to particular shipments or may cover all shipments imported by the Government agency making the application. They may be approved for specific periods of time or for indefinite periods of time, provided in either case they are supported by carrier's certificates and stipulations as provided for in paragraph (c) of this section.

(c) *Carrier's certificates and stipulations.* Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the district director in accordance with the provisions of §§ 141.11 and 141.12 of this chapter. **[TD 87-75.]**

(d) *Bond.* No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in the form as set forth below is filed with the district director in connection with the application:

I, _____, _____ (Title), a duly authorized representative of the

_____

(Name of U.S. Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the release and entry of merchandise will be observed and complied with in all respects.

_____

(Signature)

(e) *Timely entries required.* If proper entries for consumption for importations released under these regulations are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

§ 10.102 Duty-free entries.

(a) *Invoice or declaration.* No invoice or other declaration of the shipper shall be required for shipments expressly exempt from duty as provided in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40 9808.00.50, 9808.00.60, 9808.00.70 or other subheadings in the HTSUS (19 U.S.C. 1202) providing for free entry. However, the importing Government agency or office shall present any invoice, memorandum invoice, or bill pertaining to the merchandise in its possession or available to it, or, if no such invoice or bill is available, a pro forma invoice prepared in

accordance with § 141.85 of this chapter, setting forth adequate information for examination and determination of the dutiable status of the merchandise. In addition, the district director shall only admit articles free of duty under subheadings 9808.00.30, 9808.00.40 or 9808.00.50, HTSUS (19 U.S.C. 1202), upon the receipt of a certificate executed in the manner and form described in paragraph (b) of this section. **[TDs 77–23, 89–1.]**

(b) *Certification.* One of the following certificates executed by a duly authorized officer or official of the appropriate Government agency or office is required for free entry of articles under subheadings 9808.00.30, 9808.00.40 or 9808.00.50, HTSUS (19 U.S.C. 1202). The certificates may be printed, stamped, or typewritten on the Customs entry or withdrawal form, Customs Form 7501 or 7506, or on a separate paper attached to the entry or withdrawal form filed by the Government agency or office, provided the certification is clearly and unmistakably identified with the articles covered by the entry or withdrawal.

(1) *Articles for military departments, subheading 9808.00.30, HTSUS.* I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of military department), and it is accordingly requested that such material be admitted free of duty pursuant to subheading 9808.00.30, HTSUS.

_____

(Name)

_____

(Title), who has been designated to execute free-entry certificates for the above-named department.

_____ _____

(Grade or Rank) (Organization)

(2) *Articles for the General Services Administration, subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS. I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b).

_____

(Name)

_____

(Title), General Services Administration, who has been duly authorized to execute the above certificate.

(3) *Articles for the Department of Energy, subheading 9808.00.50, HTSUS.* I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with subheading 9808.00.50, HTSUS.

_____

(Name)

_____

(Title), who has been authorized to execute free-entry certificates for the Department of Energy. **[TD 85–123.]**

(c) *Release of shipments.* Shipments for which free entry has been or will be claimed under subheadings 9808.00.30, 9808.00.40 or 9808.00.50, HTSUS (19 U.S.C. 1202), shall be released after only such examination as is necessary to identify them.

(d) *Entry in Government name.* All materials for which free entry is claimed under subheadings 9808.00.30, 9808.00.40 or 9808.00.50, HTSUS (19 U.S.C. 1202), shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in § 10.102(b) unless exemption from this requirement is specifically authorized by the regional commissioner of Customs. **[TD 89–1.]**

§ 10.103 American goods returned.

(a) *Certificate required.* Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the U.S. Government (with the exception of military scrap belonging to the Department of Defense) may be admitted free of duty under subheading 9801.00.10, HTSUS (19 U.S.C. 1202), upon the filing of a certificate on the letterhead of the agency or office in the following form in lieu of other entry documentation: **[TD 77–23.]**

I hereby certify:

1. That the following articles imported in the _____ (Name of Carrier) at the port of _____ (Port) on _____ (Date) consist of returned products which are the growth, produce, or manufacture of the U.S., and have been returned to the U.S. without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles, and that the articles currently belonging to and are for the further use of _____ (Agency or Office)

Number of containers	Bill of lading No. [1]	General description of articles

2. That the shipment does not contain military scrap.

3. That the shipment is entitled to entry under subheading 9801.00.10, HTSUS.

4. That I am a military installation transportation officer having knowledge of the facts involved in this certificate.

or

I am an officer or official authorized by _____ (Agency or Office) (Whichever is applicable) to execute certificate.

_____

(Name)

_____

(Rank and branch of service or Agency or Office)

(b) *Combined certificate when articles are intermingled.* When articles claimed to be free under subheading 9801.00.10 and other article claimed to be free under subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS (19 U.S.C. 1202), are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of § 10.102(b) and paragraph (a) of this section.

(c) *Execution of certificate.* The certificate required by paragraph (a) of this section may be executed by any military installation transportation officer having knowledge of

the facts or by any other officer or official specifically designated or authorized to execute such certificates by the importing Government agency or office. If the merchandise arrived on a commercial carrier, the entry shall be supported by evidence of the right to make it. **[TD 89-1.]**

§ 10.104 Temporary importation entries for U.S. Government agencies.

The entry of articles brought into the U.S. temporarily by an agency or office of the U.S. Government and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Heading 9813, HTSUS (19 U.S.C. 1202), shall be made on Customs Form 7501. No bond shall be required if the agency or office files a stipulation in the form set forth in § 141.102(d) of this chapter. In those cases in which the provisions of Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), are not met, however, the district director will proceed as if a bond had been filed to cover the particular importation. Articles temporarily imported by a Government agency or office under this section are entitled to immediate delivery under the procedures set forth in § 10.101. **[TDs 52871, 53780, 54971, 55554, 55978, 73-175, 77-23, 89-1.]**

§ 10.105 [Reserved TD 77-23.]

§ 10.106 [Reserved TD 87-75.]

Rescue and Relief Work

§ 10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in § 322(b), Tariff Act of 1930, as amended, subject to compliance with the following conditions: **[TD 53336.]**

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report shall be made to the nearest Customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the U.S., stating the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under Customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the Customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the district director shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed, in connection with a use contemplated for it by § 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the U.S. otherwise than for a purpose contemplated for it by § 322(b), or which is not exported within 90 days after its arrival in the U.S., or within such longer time as may be specially authorized by the district director or Headquarters, U.S. Customs Service, shall be seized and forfeited to the U.S. (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322(b)) **[TD 89-1.]**

Products Exported Under Lease and Reimported

§ 10.108 Entry of reimported articles exported under lease.

Free entry shall be accorded under subheading 9801.00.20 HTSUS, whenever it is established to the satisfaction of the district director that the article for which free entry is claimed was duty paid on a previous importation, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the U.S. under a lease to a foreign manufacturer, and is being reimported by or for the account of the person who previously imported it into, and exported it from, the U.S. **[TDs 53620, 55978, 73-175, 84-149, 84-213, 87-75, 89-1.]**

§ 10.110 [Reserved TD 87-75.]

Late Filing of Free Entry and Reduced Duty Documents

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge. **[TDs 55059, 74-227.]**

Instruments and Apparatus for Educational and Scientific Institutions

§ 10.114 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR Part 301. **[TD 82-224.]**

Visual or Auditory Materials

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, HTSUS, are claimed to be free of duty under subheading 9817.00.40, HTSUS there shall be filed in connection with the entry covering such articles a document issued by the U.S. Information Agency certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. Note 1, Subchapter XVII, Chapter 98, HTSUS. **[TD 67-185.]**

(b) Articles entered under subheading 9817.00.40, HTSUS, shall be released from Customs custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with

the district director of Customs. Liquidation of an entry covering merchandise which has been released under this procedure shall be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the district director of Customs at the port of entry does not receive the required document within the 90-day period, the merchandise shall be immediately classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS (19 U.S.C. 1202 (Gen. Hdnte 11, sch. 8, pt. 6, hdnte 1)) **[TD 89–1.]**

Rate of Duty Dependent Upon Actual Use

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in § 10.58, may be applicable to merchandise subject to the provisions of §§ 10.131–10.139. **[TDs 71–139, 86–118.]**

§ 10.132 [Reserved TD 89–1.]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the U.S., three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the U.S. applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption. **[TD 89–1.]**

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the U.S. (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the district director is satisfied the merchandise will be so used. However, the district director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the **[TD 89–1.]**

§ 10.135 Deposit of duties.

When the requirement of § 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty. **[TDs 84–149, 84–213.]**

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to § 10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

§ 10.137 Records of use.

(a) *Maintenance by importer.* The importer shall maintain accurate detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records.* The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records.* The records required to be kept by paragraph (a) shall be available at all times for examination and inspection by an authorized Customs officer.

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

§ 10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

(b) *Exception for blackstrap molasses.* An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by § 10.135 without compliance with §§ 10.136, 10.137, and 10.138. Blackstrap molasses is "final" molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

$$\text{total sugars} \times 100/\text{Brix}$$

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph. **[TD 89–1.]**

Importations Not Over $5 and Bona Fide Gifts

§ 10.151 Importations not over $5.

Pursuant to § 321(a)(2)(C), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(C)), the district director shall pass free of duty and tax, and without the preparation of an entry, any importation having a fair retail value in the country of shipment not exceeding $5, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. (Sec. 7, 52 Stat. 1081, as amended, sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1321, 1498) **[TDs 73–175, 75–185, 78–394.]**

§ 10.152 Bona fide gifts.

Pursuant to § 321(a)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(A)), the district director shall pass free of duty and tax, and without the preparation of an entry, any article sent as a bona-fide gift from a person in a foreign country to a person in the U.S., provided the aggregate fair retail value in the country of shipment of such articles received by one person on 1 day does not exceed $50 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $100. An article is "sent" for purposes of this paragraph if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee. (Sec. 7, 52 Stat. 1081, as amended, sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1321, 1498) **[TDs 73–175, 75–185, 78–394, 85–123.]**

§ 10.153 Conditions for exemption.

Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty and tax under § 10.151 or § 10.152: **[TD 73–175.]**

(a) A "bona fide gift" for purposes of § 10.152 is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be "given" in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called bonus article.

(b) A parcel addressed to a person in the U.S. from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $50 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the U.S. ($100, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment. **[TDs 75–185, 78–394, 85–123.]**

(c) A parcel addressed to a person in the U.S. from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free entry under § 10.152, the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(d) Consolidated shipments addressed to one consignee shall be treated for purposes of §§ 10.151 and 10.152 as one importation. The foregoing shall not apply to shipments of bona fide gifts consolidated abroad for shipment to the U.S. when:

(1) The consolidation for shipment to the U.S. is in a cargo van or similar containerization which is consigned to a common carrier, freight forwarder, freight handler, or other public service agency for distribution of the gift packages;

(2) The separate gifts not exceeding $50 in fair retail value in the country of shipment ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the U.S.; **[TDs 75–185, 78–394, 85–123.]**

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $50 in fair retail value in the country of shipment ($100, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and **[TDs 75–185, 78–394, 85–123.]**

(4) Each gift package is separately listed in the name of the addressee-donee on a packing list, manifest, bill of lading, or other shipping document.

(e) No alcoholic beverage, perfume containing alcohol (except where the aggregate fair retail value in the country of shipment of all merchandise contained in the shipment does not exceed $5), cigars, or cigarettes shall be exempted from the payment of duty and tax under § 10.151 or § 10.152. **[TD 78–394.]**

(f) The exemptions provided for in § 10.151 or § 10.152 are not to be allowed in respect of any shipment containing one or more gifts having an aggregate fair retail value in the country of shipment in excess of $50 ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if the fair retail value exceeds the $50 (or $100) exemption, would be subject to a duty based upon its value under the provisions of § 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $50 (or $100) exemption. **[TDs 78–394, 85–123.]**

(g) The exemption referred to in § 10.151 is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry. (R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 7, 52 Stat. 1081, as amended (19 U.S.C. 66, 1321, 1498, 1624))

Generalized System of Preferences

§ 10.171 General.

(a) *Statutory authority.* Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing

countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with §§ 502(a)(1) and 503(a) of the Trade Act of 1974, as amended (19 U.S.C. 2462(a)(1), 2463(a)). **[TDs 76–2, 80–271.]**

(b) *Country defined.* For purposes of §§ 10.171 through 10.178, except as otherwise provided in § 10.176(a), the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties the President may by Executive order provide that all members of such association other than members which are barred from designation under § 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of §§ 10.171 through 10.178. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b))) **[TD 80–271.]**

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and §§ 10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol "A" as a prefix to the subheading of the Harmonized Tariff Schedule of the U.S. annotated item number for each article for which such treatment is claimed. If duty-free treatment is claimed subsequent to the time of entry in accordance with § 10.112, the filing of the Certificate of Origin, or a duplicate thereof as described in § 10.173(a)(2), shall constitute the written claim. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b))) **[TDs 76–2, 77–36, 89–1.]**

§ 10.173 Evidence of the country of origin.

(a) *Shipments covered by a formal entry.*—(1) *Certificate of Origin.* Except as provided in paragraph (a)(5) of this section, the importer or consignee of a shipment of eligible merchandise covered by a formal entry shall file with the district director in connection with the entry the Generalized System of Preferences Certificate of Origin Form A, as evidence of the country of origin. The Form A shall be properly completed and signed by the exporter of the merchandise, or other appropriate party having knowledge of the relevant facts. The Form A need not be certified by the designated governmental authority in that country unless that country has a verification agreement with the U.S. Customs Service. **[TDs 76–2, 77–36, 85–123, 86–107.]**

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director will accept in connection with the entry a duplicate Certificate of Origin issued by the party in the country of origin and endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date. **[TDs 77–36, 86–107.]**

(3) *Release under bond.* If the required Certificate of Origin properly completed, or a duplicate thereof as described in subparagraph (2) of this paragraph, is not produced at the time of entry, the entry shall be accepted, subject to compliance with the requirements set forth in § 10.172 and §§ 10.174 through 10.178, only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of the Certificate of Origin. Within 60 days after such entry, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of entry or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter. **[TDs 77–27, 84–213.]**

(4) *Verification of evidence.* Evidence of the country of origin required under this paragraph shall be subject to such verification as the district director deems necessary.

(5) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences. **[TD 82–165.]**

(b) *Shipments covered by an informal entry.* Although the filing of a Certificate of Origin, is not required for shipments covered by an informal enrtry, the district director may require such other evidence of the country of origin as he deems necessary.

(c) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country*—(1) *Declaration.* In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the party which prepared and signed the Certificate of Origin shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director the declaration shall be prepared in substantially the following form:

GSP Declaration

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable. **[TDs 84-238, 86-107.]**

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.175. Any evidence of direct shipment required by the district director shall be subject to such verification as he deems necessary. **[TD 76-2.]**

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b)))

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of §§ 10.171 through 10.178 the words "imported directly" mean: **[TD 76-2.]**

(a) Direct shipment from the beneficiary country to the U.S. without passing through the territory of any other country; or

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipped from the beneficiary developing country to the U.S. through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) The Certificate of Origin prepared and signed in the designated beneficiary developing country of origin shall state in column 12, that the eligible articles comply with the origin requirements for goods exported to the U.S. under the Generalized System of Preferences. Column 2 of the Certificate of Origin shall include the name of the consignee in the U.S. or in the free trade zone. **[TD 86-107.]**

(4) The person responsible for the articles in the free trade zone, or any person having knowledge of the facts,

shall prepare and sign an additional Certificate of Origin, Form A, declaring what operations, if any, were performed on the articles within the free trade zone. The additional Certificate of Origin shall be provided to the U.S. importer or consignee who shall present it to the district director along with the Certificate of Origin required by § 10.173(a)(1). The provisions of § 10.173(a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph. **[T.D. 86–107.]**

(5) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b)))

(d) If the shipment is from any beneficiary developing country to the U.S. through the territory of any other country and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition. **[T.D.s 83–144, 84–237.]**

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.* Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may qualify for duty-free entry under the Generalized System of Preferences ("GSP"). However, duty free entry under GSP may be accorded only if (i) the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under § 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus (ii) the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the U.S. **[T.D.s 76–2, 80–271.]**

(b) [Reserved]

(c) *Merchandise grown, produced, or manufactured in a beneficiary developing country.* Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under § 502(a)(3) of the Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)) and § 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b))) **[T.D. 80–271.]**

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *"Produced in the beneficiary developing country" defined.* For purposes of §§ 10.171 through 10.178, the words "produced in the beneficiary developing country" refer to the constituent materials of which the eligible article is composed which are either: **[T.D.s 76–2, 76–100, 86–118.]**

(1) Wholly the growth, product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the appropriate district director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.*

(1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation.

(2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b)))

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to: **[T.D. 76–2.]**

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of

engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses. (R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 503(b), 88 Stat. 2069 (19 U.S.C. 66, 1624, 2463(b)).)

Canadian Crude Petroleum

§ 10.179 Canadian crude petroleum subject to a commercial exchange agreement between U.S. and Canadian refiners.

(a) Crude petroleum (as defined in Chapter 27, Additional U.S. Note 1, HTSUS (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between U.S. and Canadian refiners which has been approved by the Secretary of Energy;

(2) The petroleum is imported pursuant to an import license issued by the Secretary of Energy;

(3) An equivalent amount of domestic or duty-paid foreign crude petroleum on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and

(4) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with the district director at the port where the original entry was made on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verification provided in Part 151, Subpart C, Customs Regulations (19 CFR Part 151, Subpart C). **[TDs 81-292, 89-1.]**

Certain Fresh, Chilled, or Frozen Beef

§ 10.180 Certification.

(a) The foreign official's meat-inspection certificate required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be modified to include the certification below when fresh, chilled, or frozen beef is to be entered under the provisions of subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, HTSUS. The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country and filed with Customs with the entry summary or with the entry when the entry summary is filed at the time of entry. The requirements of this section shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of subheadings 0201.20.20, 0201.30.20, 0202.20.20, 0202.30.20, HTSUS, should consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within the U.S. Department of Agriculture's jurisdiction.

Certification

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef meets the specifications prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

(b) Appropriate officials of the following countries have agreed with the U.S. Department of Agriculture as to the grades or standards for fresh, chilled, or frozen beef within their respective countries which will satisfy the certification requirements of paragraph (a) of this section:

Canada

[TDs 82-8, 89-1.]

Watches and Watch Movements From U.S. Insular Possessions

§ 10.181 Watches and watch movements from U.S. insular possessions.

(a) The issuance of an International Trade Administration Form ITA-360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements by the Department of Commerce, authorizes a producer of watches in the U.S. insular possessions to file requests with Customs for the refund of duties paid on imports of watches, watch movements (including solid state watches and watch movements), and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the

Form ITA-360 certificate from the Department of Commerce.

(b) The Form ITA-360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present Customs Form ITA-361, Request for Refund of Duties on Watches and Watch Movements, properly executed and authenticated by the Department of Commerce.

(c) By completing Form ITA-361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA-361 with Customs at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA-361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA-361, the claimant also must complete and submit to Customs the declaration on the form which reads as follows:

"I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the U.S.; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made."

(f) A fee of 1 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request.

(g) Form ITA-360 expires 1 year from its date of issuance. Any refund request on Form ITA-361 made by either the insular producer itself or any transferee named on Form ITA-360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) Customs will process only those refund requests made in accordance with the joint rules of the Department of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR Part 303. **[TDs 84-16, 84-211, 89-1.]**

Civil Aircraft

§ 10.182 [Reserved TD 89-1.]

§ 10.183 Civil aircraft, flight simulators, parts of civil aircraft, and parts for flight simulators.

(a) *Definition.* "Civil aircraft", when used in this section, means all aircraft other than aircraft purchased for use by the Department of Defense or the U.S. Coast Guard.

(b) *Admission free of duty.* Civil aircraft parts for civil aircraft certified for use in accordance with the provisions of General Note 3(c)(iv), Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202), flight simulators, and parts for flight simulators, may be admitted free of duty upon compliance with the provisions of this section.

(c) *Documentation*—(1) *Generally.* Each entry summary for civil aircraft, flight simulators, civil aircraft parts, or flight simulator parts shall be filed with a copy of the written order, contract, or any additional documentation Customs shall require, to verify the claim for admission free of duty unless the district director is satisfied that the documents will be available for inspection for 5 years from the time of entry, as provided by Part 162 of this chapter. "Time of entry" is defined in § 141.68 of this chapter. Proof of end use of the civil aircraft, flight simulators, civil aircraft parts, or flight simulator parts need not be furnished. If the district director determines that documentation necessary to verify the claim for entry free of duty is not available at the time of filing the entry summary, the importer may enter the civil aircraft, flight simulator, civil aircraft part, or flight simulator part and post a bond for the missing document in accordance with §§ 141.66 and 141.91 of this chapter. The fact that a civil aircraft, flight simulator, civil aircraft part, or flight simulator part has previously been exported with benefit of drawback does not preclude free entry under this section and Chapter 88, HTSUS.

(2) *Civil aircraft parts.* At the time of filing the entry summary, the importer of civil aircraft parts shall submit a certificate in substantially the form described in paragraph (d)(1) of this section. As an alternative, an importer who expects to file more than one entry for civil aircraft parts during any 12-month period may submit a blanket certification in substantially the form described in paragraph (d)(2) of this section with the district director at each district where civil aircraft parts are to be entered under the provisions of General Note 3(c)(iv), HTSUS. Upon approval by the district director, the blanket certification shall be valid for a period of 1 year from the date of approval. The blanket certification may be renewed for additional 1-year periods upon written request to each concerned district director. The certification may not be treated as a missing document for which a bond may be posted. Failure to provide the certification at the time of filing the entry summary or to have an approved blanket certification on file with the district director in the district where the entry summary is filed shall result in a dutiable entry.

(d) *Certification*—(1) *Entry-by-entry certification.* If the certification is to be filed with each entry summary, it shall be substantially in the following form and may be stamped, typed, or printed on the entry summary or submitted as a separate document:

ENTRY-BY-ENTRY CERTIFICATION FOR CIVIL AIRCRAFT PARTS

I certify that:

(1) The aircraft part(s) specifically identified in the entry summary has (have) been imported for use in civil aircraft and, to the best of my knowledge and belief, will be so used.

(2) Check the appropriate box(es):

[ ] (a) The article(s) specifically identified in the entry summary has (have) been approved for use in civil aircraft by the Administrator of the Federal Aviation Administration ("FAA").

Approved part number(s) may be shown here or reference the appropriate attached invoice(s) _____.

[ ] (b) The article(s) specifically identified in the entry summary has (have) been approved for use in civil aircraft by _____, the airworthiness authority in the country of exportation. This approval is recognized by the FAA as an acceptable substitute for FAA approval.

Approved part number(s) may be shown here or reference the appropriate attached invoice(s) _____.

[ ] (c) An application for approval for use in civil aircraft for the article(s) specifically identified in the entry summary has been submitted to, and accepted by, the Administrator of the FAA.

_____
Importer's Signature and Date

(2) *Blanket certification.* The certification may be in the form of a blanket certification which shall be valid for a period of one year from the date of approval by the district director in the district where the civil aircraft parts will be entered. The blanket certification may be renewed for additional one-year periods upon written request to each concerned district director. If a blanket certification is used it shall be substantially in the following form.

BLANKET CERTIFICATION FOR CIVIL AIRCRAFT PARTS

I Importer's name, address, IRS number _____, certify that the use by me or my authorized agent on an entry summary, or other entry documentation, of a HTSUS subheading number for civil aircraft parts, the subheading number description of which requires certification for use in civil aircraft, means that the articles identified on the entry summary or entry documentation are imported for use in civil aircraft within the meaning of Chapter 88, HTSUS, and § 10.183, Customs Regulations (19 CFR 10.183), that the articles will be so used and that the articles have been approved for such use by the Administrator of the Federal Aviation Administration (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the FAA.

I agree (1) that documentation will be maintained to support the above certification, and (2) to inform the district director of any change which would affect the validity of this certification.

I understand that this certification will be valid for a period of one year from the date of approval by the district director and will cover entries made only in the district where filed.

Signature_____
Title_____
District Director_____
Approval date_____

(e) *Verification.* The district director shall monitor and periodically audit selected entries made under this section. **[TDs 84–109, 89–1.]**

Caribbean Basin Initiative

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98–67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions.*—(1) *Beneficiary country.* For purposes of § 10.191 through § 10.198 and except as otherwise provided in § 10.195(b), the term "beneficiary country" means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with § 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) *Eligible articles.* Except as provided herein, for purposes of § 10.191(a), the term "eligible articles" means any merchandise which is imported directly from a beneficiary country as provided in § 10.193 and which meets the country of origin criteria set forth in § 10.195. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI:

(i) Textile and apparel articles which are subject to textile agreements.

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–1465).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in Chapter 27, Harmonized Tariff Schedule of the United States (HTSUS).

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply.

(vi) Sugars, sirups, and molasses, provided for in subheadings 1701.11.00 and 1701.12.00, HTSUS, to the extent that importation and duty-free treatment of such articles are limited by Additional U.S. Note 4, Chapter 17, HTSUS.

(vii) Articles subject to the provisions of the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to § 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(viii) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to §§ 213(c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture of a beneficiary country" refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficiary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of § 10.191 through § 10.198, the term "entered" means entered, or withdrawn from

warehouse for consumption, in the customs territory of the U.S. [TD 89-1.]

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198 have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol "E" as a prefix to the HTSUS subheading number for each article for which such treatment is claimed on that document. If duty-free treatment is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration as required in § 10.198 shall constitute the written claim. [TDs 84-237, 89-1.]

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198 the words "imported directly" means:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country, while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition. [TD 84-237.]

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the district director.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country.*—(1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commence which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place). The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article or material.

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(e) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *"Materials produced in a beneficiary country or countries" defined.* For purposes of § 10.195, the words "materials produced in a beneficiary country or countries" refer in those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries, or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable "crust leather". The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one or more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable "crust leather", which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned marterial of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant. If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in § 10.195 and § 10.198, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Certificate of Orgin.* Except as provided in paragraphs (a)(4) and (c)(3) of this section, the importer or consignee of a shipment of merchandise covered by a formal entry for which treatment under the CBI is claimed, shall file with the district director with the entry summary, as evidence of the country of origin, the Certificate of Origin Form A adopted for use under the Generalized System of Preferences, as provided for in § 10.173 of this chapter. The references to "Generalized System of Preferences" appearing on the front of the Form A shall be replaced by the reference "Caribbean Basin Initiative", and the Form A shall be properly completed and signed by the exporter of the merchandise, or other appropriate party having knowledge of the relevant facts, in the beneficiary country where the merchandise was produced or last processed. The Form A may be, but need not be, certified by the designated governmental authority in that country. **[TD 86-107.]**

(2) *Release under bond.* If the required Certificate of Origin properly completed, is not filed with the entry summary, the entry summary shall be accepted, subject to compliance with the requirements set forth in §§ 10.192 through 10.197, only if the importer or consignee gives a bond in such amount as is required by the district director for the production of the Certificate of Origin. Within 60 days after filing the entry summary, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of filing the entry summary, or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

(3) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(4) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the CBI.

(b) *Shipments covered by an informal entry.* Although the filing of a Certificate of Origin is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(c) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(1) *Declaration.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the party which prepared and signed the Certificate of Origin in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

CBI Declaration

I, _____ (name), hereby delcare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) or in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of article and quantity	Processing operations performed on article		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date_____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party which prepared and signed the Certificate of Origin for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S. after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (c)(1) shall be filed by the importer or consignee in lieu of the Certificate of Origin, with the entry summary, as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(d) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as dutiable. **[TDs 84-237, 86-107.]**

UNITED STATES-CANADA FREE TRADE AGREEMENT

§ 10.301 Scope.

The provisions of §§ 10.302–10.311 of this part relate to the procedures for obtaining preferences for imported goods designated as eligible in the "special" column of the Harmonized Tariff Schedules of the United States (HTSUS), and General Note 3(c), HTSUS. These preferences were the subject of the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (100 Stat. 418). In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to section 407 of the Agreement.

§ 10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§ 10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol "CA" appears in the "special" column are eligible for a preference if:

(a) *Originating goods.* Goods originate in Canada or the United States if they are wholly obtained or produced in the territory of Canada or the United States, or both, or have been transferred in the territory of either party in accordance with General Note 3(c), HTSUS, and

(b) *Direct shipment required.* Except as provided in § 10.306(b), are directly shipped to the United States from Canada.

§ 10.303 Originating goods.

For the purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(a) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in Canada or the United States, or both.

(b) *Transformed with a Change in Classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c) HTSUS; or

(c) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS; or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(1) the value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of goods when exported to the United States,

(2) the assembled goods are not subsequently processed or further assembled in a third country, and

(3) the goods satisfy the requirement in § 10.306.

(d) *Articles of Feather.* The goods are eligible to be treated as originating in Canada pursuant General Note 3(c)(vii)(Q)(12)(ee).

§ 10.304 Exclusions.

(a) *Changes based on simple processing.* No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing.* No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

The following definitions apply whenever a specific rule or origin under the Agreement requires a value content determination:

(a) *Direct cost of processing or assembling.* The terms "direct cost of processing" or "direct cost of assembling" means the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(1) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(2) the cost of inspecting and testing the goods;

(3) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(4) development, design, and engineering costs;

(5) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(6) royalty, licensing, or other like payments for the right to the goods.

(b) *Value of originating materials.* The term "value of mateirals originating in the United States or Canada or both" means the aggregate of

(1) the price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(2) when not included in the price, the following costs related thereto:

(i) freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (1) to the location of the producer;

(ii) duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(c) *Value of goods when exported.* The term "value of the goods when exported to the United States" means the aggregate of:

(1) the price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) the value of goods and services relating to all materials determined in accordance with subparabraph 1(b) of Article 8 of the Agreement on Implementation or Article VII of the General Agreement on Tariffs and Trade; and

(2) the direct cost of processing or the direct cost of assembling the goods.

(d) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(e) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(1) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(2) brokerage charges relating to the importation and exportation of goods;

(3) costs for telephone, mail, and other means of communication;

(4) packing costs for exporting the goods;

(5) royalty payments related to a licensing agreement to distribute or sell the goods;

(6) rent, mortgage interest, depreciation and buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with admininstrative functions; and

(7) profit on the goods.

§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment.* The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country.* The goods were shipped through the territory of a third country but: (1) the goods did not enter the commerce of any third country; (2) the goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition;

and (3) all shipping and export documents show the United States as the final destination.

§ 10.307 Documentation.

(a) *Claims for a preference.* A preference in accordance with the Agreement is claimed by including on the entry summary, or equivalent documentation, the symbol "CA" as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* A claim for preference under the Agreement must be made at the time of the filing of the entry summary in accordance with § 10.307(a) of this part. Failure to make a timely claim will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* Goods for which a preference is claimed under paragraph (a) of this section shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed under paragraph (a) of this section and shall be presented to the district director upon request.

(d) *Exporter's Certificate of Origin.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, D.C. 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(e) *Exceptions to documentation requirements.* Exceptions to the foregoing documentation requirements may be authorized at the discretion of the district director in the following circumstances:

(1) *Exception for informal entries.* As set forth in subparagraphs (i) and (ii) of this paragraph, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry.* The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One: ( ) Manufacturer
( ) Supplier
( ) Exporter

_____ _____
Signature Title

Date:_____

(ii) *Noncommercial goods which qualify for informal entry.* The importation of goods from Canada by a person for noncommercial use may exempt from documentation requirements if the goods are legally marked "Made in Canda", or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

§ 10.308 Records retention.

(a) *Importer.* The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

b) *Exporter.* Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the district director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election.* In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-month period. The election to average is subject to the conditions and requirements set forth in sections 10.310 and 10.311.

(b) *Effect of election.* An election to average shall be binding at the time of the first entry of vehicles for which the election has been made. If a manufacurer's annual report, required by section 10.311, does not verify the claim that the vehicles are originating goods under the Agreement or Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin.* In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election.* A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568 on Customs Form 355, Declaration of Election to Average.

(b) *Quarterly Report.* A quarterly report shall be submitted to the Regulatory Audit Division, at the above address, on Customs Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the Customs Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the Customs Form 356. Negative quarterly reports are required.

(c) *Annual Report.* An annual report shall be submitted to the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568, on Customs Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, Customs Form 355. In lieu of the Customs Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs Service, Regulatory Audit Division, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on Customs Form 357. **[TD 89–3.]**

PART 11—PACKING AND STAMPING; MARKING

Packing and Stamping

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Marking

11.9 Special marking on certain articles.
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11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

Authority: The provisions of this Part 11 issued under R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, HTSUS, except as otherwise noted.

Source: The provisions of this Part 11 appear at 28 FR 14701, Dec. 31, 1963, unless otherwise noted.

Packing and Stamping

§ 11.1 Cigars, cigarettes, medicinal preparations, and perfumery.

(a) All cigars and cigarettes imported into the U.S., except importations by mail and in baggage, shall be placed in the public stores or in a designated bonded warehouse to remain until inspected, weighed, and repacked, if necessary, under the Customs and internal-revenue laws. However, if the invoice and entry presented specify all of the information necessary for prompt determination of the estimated duty and tax on the packages of cigars and cigarettes covered thereby, the district director may permit designation of less than the entire importation for examination. **[TDs 25977, 51395, 52916, 53548, 54393, 54763, 54875.]**

(b) After the cigars and cigarettes have been examined, weighed, and appraised, before release the inspecting officer shall verify that they are in properly constructed packages, conforming to the requirements of the regulations of the Bureau of Alcohol, Tobacco, and Firearms, bearing a legible imprint or a securely affixed label stating the quantity, kind, and classification for tax purposes as required by such regulations. Cigars or cigarettes must be in compliance with such requirements before being released for consumption unless specifically exempted therefrom as indicated in § 11.3. **[TDs 10381, 11811, 15362, 21272, 21743, 21865, 22770, 23887, 30719, 41074, 41416, 44623, 51395, 52916, 53548, 54393, 54875, 55472, 78-329.]**

(c) The immediate containers of all domestic cigars, cigarettes, medicinal preparations, and perfumery, which are returned to the U.S. and are subject to a duty equal to an internal-revenue tax, shall be stamped by the Customs inspector with a rubber stamp bearing the legend "U.S. Customs—American Goods Returned_____ Inspector." The inspector's initials shall appear in the space provided therefor. The packaging requirements set forth in paragraph (b) of this section apply to returned cigars and cigarettes of domestic origin. **[TDs 51395, 53548, 54393, 54875.]**

§ 11.2 Manufactured tobacco.

(a) If the invoice and entry presented for manufactured tobacco specify all the information necessary for prompt determination of the estimated duty on the manufactured tobacco covered thereby, the district director of Customs may permit designation of less than the entire importation for examination. **[TDs 41074, 48954, 53548, 54393, 54875, 55472, 67-193.]**

(b) In the case of returned American manufactured tobacco, the packages shall be marked or stamped by Customs with the inscription "American goods returned."

§ 11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.

Cigars, cigarettes, and cigarette papers and tubes may be released from Customs custody without payment of any applicable internal revenue tax upon presentation of the Customs entry or withdrawal form and three copies of Alcohol, Tobacco and Firearms form 2145 (5200.11) or 3072 (5210.14), certified by the appropriate regional regulatory administrator, Bureau of Alcohol, and Tobacco and Firearms. The Customs officer shall complete the notice of release, retain one copy, send one copy to the regional regulatory administrator, and return one copy to the manufacturer. The release may not be made under a mail entry. See §145.13(b) of this chapter. **[TDs 54393, 54875, 55472, 67-193, 73-135, 78-329.]**

§ 11.3 Package and notice requirements for cigars and cigarettes; package requirements for cigarette papers and tubes.

Exemptions from tax on cigars, cigarettes, and cigarette papers and tubes apply in accordance with the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR Part 275) upon release from Customs custody of such articles imported by consular officers and employees of foreign states. Cigars, cigarettes, cigarette papers, and tubes may also be released without payment of tax as provided in § 11.2a and for exhibition in accordance with Part 147 of this chapter. Additionally, cigars, cigarettes, or cigarette papers and tubes may be admitted free of duty and tax under the provisions of subchapter IV, Chapter 98, HTSUS (19 U.S.C. 1202), or § 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), §§ 148.63, 148.74, and subpart I of Part 148 of this chapter. Except in the foregoing instances and in any instance in which such articles are imported in passengers' baggage or are to be released under a mail entry for the personal consumption of the importer or for disposition as his bona fide gift, the provisions in Part 275 of the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR Part 275) as to packages and notices thereon apply.

[TDs 41074, 54875, 55340, 55472, 55978, 67-193, 73-27, 73-227, 78-329, 89-1.]

§ 11.5 Reserved [TD 82-224.]

§ 11.6 Distilled spirits, wines, and malt liquors in bulk.

(a) The district director, in his discretion, may require marks, brands, stamps, labels, or similar devices to be placed on any bulk container used for holding, storing, transferring, or conveying imported distilled spirits, wines, and malt liquors, in accordance with 19 U.S.C. 467.

(b) Marks, brands, stamps, labels, or similar devices required by Federal, state, or local statute or regulation may be affixed, and Customs inspection, gauging, marking, or measurement may be done, at the place of unlading or other suitable place, unless the district director determines that inspection, gauging, marking, or measurement shall be done at a public store, warehouse, or other appropriate facility.

(c) Marks, brands, stamps, labels, or similar devices shall be permanent in nature and not subject to obliteration or removal as a result of handling or other conditions. The district director shall determine whether a mark, brand, stamp, label, or similar device is acceptable, based on the nature, surface, and composition of the container. [TDs 48711, 55978, 79-221, 89-1.]

§ 11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Bureau of Alcohol, Tobacco, and Firearms.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Bureau of Alcohol, Tobacco, and Firearms relating to strip stamps and other matters. (27 CFR pts. 5, 201, and 251). Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations. [CIEs 1165/39; 843/41; TDs 48711, 54393, 78-329.]

Marking

§ 11.9 Special marking on certain articles.

(a) No movement, case, or dial provided for in Chapter 91, Harmonized Tariff Schedule of the U.S. (HTSUS), shall be released for consumption until marked in exact compliance with the requirements additional U.S. Note 4, Chapter 91. If any article so required to be marked is found not to be marked to indicate the country of origin, the 10 percent marking duty shall be assessed, unless such marking is accomplished or the merchandise is exported or destroyed under Customs supervision prior to the liquidation of the entry, in accordance with the provisions of § 304(c), Tariff Act of 1930, as amended. [TDs 30281, 42991, 49658, 50277(3), 53336, 53399, 55978, 89-1.]

(b) The name of the manufacturer or purchaser which must appear on articles provided for in schedule 7, part 2E, Tariff Schedules of the United States, and specified in headnote 4 of that subpart, may be either the actual name of the manufacturer or purchaser of a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term "Purchaser" as used in this paragraph means the purchaser in the U.S. by whom or for whose account the articles are imported. [TDs 42092, 51714, 53336, 55978.]

§ 11.12 Labeling of wool products to indicate fiber content.

(a) Wool products imported into the U.S., except those made more than 20 years prior to importation, and except carpets, rugs, mats, and upholsteries, shall have affixed thereto a stamp, tag, label, or other means of identification, as required by the Wool Products Labeling Act of 1939 (54 Stat. 1129; 15 U.S.C. 68 et seq.) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 300). The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool. [TD 50388.]

(b) If imported wool products are not correctly labeled and the district director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter. [TDs 54318, 72-262.]

(c) Packages of wool products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require. [TDs 74-227, 84-213.]

(d) The district director shall give written notice to the importer of any lack of compliance with the Wool Products Labeling Act of 1939 in respect of an importation of wool products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected. [TDs 55290, 73-175.]

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Wool Products Labeling Act of 1939, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate. [TD 53268.]

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of the district director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D.C. (Sec. 8, 54 Stat. 1132; 15 U.S.C. 68f)

§ 11.12a Labeling of fur products to indicate composition.

(a) Fur products imported into the U.S. shall have affixed thereto a label as required by § 4 of the Fur Products Labeling Act (15 U.S.C. 69b) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR 301.1–301.49). The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Federal Trade Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein. **[TD 53064.]**

(b) If imported fur products are not correctly labeled and the district director is satisfied that the error or omission involved no fraud or wilful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter. **[TDs 54318, 72-262.]**

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require. **[TDs 74-227, 84-213.]**

(d) The district director shall give written notice to the importer of any lack of compliance with the Fur Products Labeling Act in respect of an importation of fur products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected. **[TDs 55290, 73-175.]**

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Fur Products Labeling Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate. **[TD 53268.]**

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of a district director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington , D.C. 20580. (Sec. 6, 65 Stat. 178; 15 U.S.C. 69d)

§ 11.12b Labeling textile fiber products.

(a) Textile fiber products imported into the U.S. shall be labeled or marked in accordance with the Textile Fiber Products Identification Act (15 U.S.C. 70–70k) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 303) unless exempt from marking or labeling under § 12 of the Act (15 U.S.C. 70i). An invoice or other paper, containing the specified information may be used in lieu of a label where the textile product is not in the form intended for sale, delivery to, or for use by the ultimate consumer. Rule 31 of the Federal Trade Commission (16 CFR 303.31). **[TD 55085.]**

(b) If imported fiber products are not correctly labeled and the district director is satisfied that the error or omission involves no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such Act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter. **[TD 72-262.]**

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require. **[TDs 74-227, 84-213.]**

(d) The district director shall give written notice to the importer of any lack of compliance with the Fiber Products Identification Act in respect of an importation of fiber products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected. **[TDs 55290, 73-175.]**

(e) If the products covered by a notice and demand given pursuant to the preceding paragraph are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Fiber Products Identification Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon

the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any willful or flagrant violation of the Act with respect to the importation of articles comes to the attention of a district director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington 25, D.C. 20580. (Sec. 501, 65 Stat. 290, secs. 2–12, 14, 72 Stat. 1717; 15 U.S.C. 70–70k, 31 U.S.C. 483a.)

§ 11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers of which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation under 15 U.S.C. 294, 295, 296, 1124, 1125 or 48 U.S.C. 1405q, and shall be detained. **[TDs 51779, 89–1.]**

(b) Articles made in whole or in part of gold or silver or alloys thereof imported for sale by manufacturers or dealers which are marked or labeled in a manner indicating a greater degree of fineness than the actual fineness of the gold or silver or alloys thereof, and any plated or filled articles so imported which are marked or labeled to indicate the fineness of the gold or silver and are not also marked or labeled to indicate the plated or filled condition or are marked or labeled with the word "sterling" or the word "coin", are prohibited importation and shall be detained, and the facts shall be reported to the U.S. attorney. **[CIE 33/43, 143.]**

(c) Whenever any articles are detained in accordance with the foregoing provisions of this section, and the case of any articles detained under paragraph (b) of this section the U.S. attorney has indicated that he does not intend to prosecute, the articles shall be seized and forfeited in the usual manner, except that, upon the filing of a petition therefor by the importer prior to final disposition of the articles, the district director may release the articles upon the condition that the prohibited marking be removed or obliterated or that the articles and containers be properly marked to indicate their origin, contents, or condition, or may permit the articles to be exported or destroyed under Customs supervision, and without expense to the Government.

(d) Articles forfeited for violation of § 294, 1124, or 1125, title 15 and § 545, title 18, United States Code, may be disposed of in accordance with the procedure applicable to other Customs forfeitures, but may not be released from Customs custody except upon the removal by and at the expense of the party in interest of the prohibited marking by reason of which the articles were seized, except articles disposed of under §133.52 (a) or (b) of this chapter. (Secs. 1–5, 34 Stat. 260–262, secs. 42, 43, 60 Stat. 440, 441, sec. 11, 62 Stat. 716, sec. 618, 46 Stat. 757; 15 U.S.C. 294–298, 1124, 1125, 18 U.S.C. 545, 19 U.S.C. 1618) **[TDs 52159, 53399, 79–159.]**

PART 12—SPECIAL CLASSES OF MERCHANDISE

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Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen. Note 9 Harmonized Tariff Schedule of the United States, unless otherwise noted. Sections 12.105 through 12.109 also issued under sec. 204, 86 Stat. 1297 (19 U.S.C. 2094). Sections 12.110 through 12.117 also issued under sec. 17(e), Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972; Pub. L. 92-516 (7 U.S.C. 1360(e)). Sections 12.118 through 12.127 also issued under section 13, 90 Stat. 2034 (15 U.S.C. 2621).

Source: 28 FR 14710, Dec. 31, 1963, unless otherwise noted. Sections 12.105 through 12.109 appear at 38 FR 10807, May 2, 1973, unless otherwise noted.

Cross Reference: For joint regulations promulgated by the Secretary of the Treasury and the Secretary of Agriculture, with respect to importations of economic poisons and devices under the regulations for the enforcement of section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act, see 40 CFR Part 162.

Food, Drugs, and Cosmetics, Economic Poisons, Hazardous Substances, and Dangerous Caustic or Corrosive Substances

§ 12.1 Cooperation with certain agencies; joint regulations.

(a) *Federal Food, Drug, and Cosmetic Act.* The importation into the U.S. of food, drugs, devices, and cosmetics as defined in § 201 (f), (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (f), (g), (h), (i)) is governed by § 801 of the Act, as amended (21 U.S.C. 381) and regulations issued under authority of § 701(b) of the Act (21 U.S.C. 371(b)) by the Secretary of Health and Human Services and the Secretary of the Treasury (21 CFR 1.315–1.322). **[21 USC 371(b). TDs 51775, 51836, 52492, 53399, 68–191, 82–145.]**

(b) *Federal Insecticide, Fungicide, and Rodenticide Act.* The importation of pesticides and devices is governed by § 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136*o*(c)), and regulations issued under the authority of § 17(e) of that Act (7 U.S.C. 1360(e)) by the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, as set forth below (§ 12.110 *et seq.*). **[TDs 68–191, 75–194.]**

(c) *Federal Hazardous Substances Act.* The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in § 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of §§ 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265–272). **[15 USC 409(c). TDs 68–191, 82–14.]**

§ 12.3 Release under bond.

No food, drug, device, cosmetic, pesticide, hazardous substance, or dangerous caustic or corrosive substance, the subject of § 12.1 shall be released except in accordance with the laws and regulations applicable thereto. Where any such merchandise is to be released under bond pursuant to regulations applicable thereto, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be required. **[7 USC 135h, 15 USC 405(a), 21 USC 381(b). TDs 50069, 51836, 50320, 52492, 53399, 68–191, 75–194, 84–213.]**

§ 12.4 Exportation.

The exportation of merchandise, the subject of § 12.1, refused admission into the U.S. in accordance with regulations applicable thereto shall be under Customs supervision

in accordance with the regulations set forth in §§ 18.25 and 18.26 of this chapter. **[7 USC 134, 15 USC 405(b), 21 USC 381(b). TDs 50505, 51836, 52492, 68–191.]**

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment shall be under a Customs carrier's manifest, Customs Form 7512, in the same manner as shipments in bond. **[TDs 51836, 52492, 68–191.]**

Importation of Certain Cheeses

§ 12.6 Affidavits required to accompany entry.

(a) Cheeses produced in the member states of the European Communities shall not be permitted entry into the Customs territory of the U.S. (excluding Puerto Rico) if exported from any country or area other than the country of origin, or into Puerto Rico, unless accompanied by: **[TD 75–210.]**

(1) An affidavit, in the event of shipments into the Customs territory of the U.S. (excluding Puerto Rico), of the producer or exporter that the cheese has not received and will not receive restitution payments of the type referred to in Executive Order No. 11851, dated April 10, 1975 (40 FR 16645); or

(2) An affidavit, in the event of shipments into Puerto Rico, of the importer that the cheese will be consumed in Puerto Rico or areas outside the Customs territory of the U.S. Proof of actual consumption shall be furnished to the appropriate Customs officer within three years after the date such cheese is entered or withdrawn from warehouse, for consumption.

(b) These affidavits shall not be required to accompany importations of cheese produced in the member states of the European Communities if such cheese is shipped directly to the U.S. (excluding Puerto Rico) from the country of origin on a through bill of lading. (Sec. 303, 46 Stat. 687, sec. 204, 70 Stat. 200, as amended (7 U.S.C. 1854, 19 U.S.C. 1303))

Milk and Cream

§ 12.7 Permits required for importation.

(a) Under the act of February 15, 1927 (44 Stat. 1101, as amended, 21 U.S.C. 141–149), commonly known as the Federal Import Milk Act, the importation into the U.S. of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the U.S. holds a valid permit from the Department of Health and Human Services. Such permits become invalid at the end of one year unless applications for renewal are filed prior to the date of expiration. **[TDs 53399, 82–145.]**

(b) The regulations of the Department of Health and Human Services under the said act require that each container of milk or cream shipped or transported into the U.S. by a permittee shall have firmly attached thereto a tag showing in clear and legible type the product (raw milk, pasteurized milk, raw cream, or pasteurized cream) the permit number and the name and address of the shipper; except that in case of unit shipments consisting of milk only or cream only under one permit number, each container need not be so marked if the vehicle of transportation is sealed and tagged with the above-mentioned tag. In such case the tag is required to show, in addition to the other required information, the number of containers and the contents of each. Customs officers shall not permit the importation of any milk or cream that is not tagged in accordance with such regulations. **[TDs 52492, 82–145.]**

Meats and Meat-Food Products

§ 12.8 Inspection; bond; release.

(a) All imported meat, meat-food products horse meat and horse meat-food products offered for entry into the U.S. are subject to the regulations prescribed by the Secretary of Agriculture under § 306, Tariff Act of 1930. The term "meat and meat-food products," for the purpose of this section, shall include any imported article of food or any imported article which enters or may enter into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession. Such meat, meat-food products, horse meat and horse meat-food products shall not be released from Customs custody prior to inspection by an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, except when authority is given by such inspector for inspection at the importer's premises or other place not under Customs supervision. In such case a bond for the return to Customs custody of the merchandise shall be given by the consignee or agent on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, and the conveyances or packages in which such merchandise is removed to the place of examination shall be sealed or corded and sealed by a customs officer or an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, with import-meat seals furnished by the Department of Agriculture unless bearing U.S. Customs seals, or in the case of packages otherwise identified as provided for in this section. When cording is necessary for proper sealing, the cords shall be furnished and affixed by the importer or his agent. Import-meat seals or cords and seals may be broken only by a Customs officer or inspector of the Meat Inspection Division, Agricultural Research Service. **[TDs 38969, 48781, 51255, 51851, 52433, 52492, 53946, 55247, 78–99, 82–145 84–213, 89–1.]**

In lieu of cording and sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

Notice

This package of meat or meat product must be delivered intact to an inspector of the Meat Inspection Division, U.S. Department of Agriculture.

Warning

Failure to comply with these instructions will result in penalty action being taken against the holder of the Customs entry bond.

If the product is found to be acceptable upon inspection the package will be marked "U.S. Inspected and Passed" and this warning notice defaced.

(b) Liquidated damages assessed for breach of a bond taken under this section, if not in excess of $20,000, and if a written application for relief is filed, may be canceled by the district director upon the payment of less than the full amount as he shall deem appropriate, or without the payment of any amount, as may be deemed appropriate, but the district director shall not act under this paragraph unless the officer in charge of the local office of the Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture, is in full agreement with the proposed action. If there is no local inspector of the Food Safety and Quality Service, Meat and Poultry Inspection, the district director shall not act unless he has obtained the full agreement of the Food Safety and Quality Service, Meat and Poultry Inspection in Washington. **[TDs 53946, 55247, 78-99, 84-213.]**

§ 12.9 Release for final delivery to consignee.

No meat, meat-food products, or animal casings shall be released for final delivery to the consignee until the district director is advised by the Department of Agriculture, or its representative, that the merchandise is admissible. **[TDs 33952, 42447.]**

Plants and Plant Products

§ 12.10 Regulations and orders of the Department of Agriculture.

The importation into the U.S. of plants and plant products is subject to regulations and orders of the Department of Agriculture restricting or prohibiting the importation of such plants and plant products. Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations and orders of the Department of Agriculture and the provisions of law under which they are made. (Secs. 1-9, 11, 37 Stat. 315, as amended, 316, 317, 318, as amended, 319, 37 Stat. 854; 7 U.S.C. 151-162) **[TDs 52492.]**

§ 12.11 Requirements for entry and release.

(a) The importer or his representative shall submit to the district director at the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form provided for the purpose by the Department of Agriculture. The district director at the port of arrival shall compare the notice of arrival which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival has been submitted and release for the intended purpose as authorized by an inspector of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs. **[TDs 52492, 55039, 78-99.]**

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all Customs requirements for the release of the merchandise have been met, the merchandise shall be forwarded under a special manifest (Customs Form 7512) and in-bond labels or Customs seals to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the district director shall be required. **[TDs 52610, 54056, 55039, 78-99.]**

§ 12.12 Release under bond.

Plants or plant products which require fumigation, disinfection, sterilization, or other treatment as a condition of entry may be released to the permittee for treatment at a plant approved by the Department of Agriculture upon the giving of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to insure that the merchandise is treated under the supervision and to the satisfaction of an inspector of the Department of Agriculture or returned to Customs custody when demanded by the district director. **[TDs 52492, 84-213.]**

§ 12.13 Unclaimed shipments.

(a) If plants or plant products enterable into the U.S. under the rules and regulations promulgated by the Secretary of Agriculture are unclaimed, they may be sold subject to the provisions of subparts C and D of Part 127 of this chapter to any person to whom a permit has been issued who can comply with the requirements of the regulations governing the material involved. **[TDs 52492, 74-114.]**

(b) Unclaimed plants and plant products not complying with the requirements mentioned in this section shall be destroyed, by burning or otherwise, under Customs supervision.

§ 12.14 Detention.

(a) District directors shall refuse release of all plants or plant products with respect to which a notice of prohibition has been promulgated by the Secretary of Agriculture under any of the various quarantines. If an importer refuses to export a prohibited shipment immediately, the district director shall report the facts to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and the U.S. attorney and withhold delivery pending advice from that Department. **[TDs 52492, 55039, 78-99.]**

(b) In case of doubt as to whether any plant or plant product is prohibited, the district director shall detain it pending advice from the Department of Agriculture.

§ 12.15 Disposition; refund of duty.

Plants or plant products which are prohibited admission into the U.S. under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 158.41 and 158.45(c) of this chapter.) (Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558) **[TD 72-258.]**

Agricultural and Vegetable Seeds

§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

(a) The importation into the U.S. of agricultural and vegetable seeds and screenings thereof is governed by rules and regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture under § 402(b) of

the Federal Seed Act of August 9, 1939 (7 CFR 201). **[TDs 82-145, 89-1.]**

(b) Under the said joint rules and regulations, district directors are required to draw samples of such seeds and screenings, forward them to the seed laboratories, and notify the owner or consignee that such samples have been drawn and that the shipment shall be held intact pending a decision of the Livestock, Meat, Grain and Seed Division, Agricultural Marketing Service, in the matter. **[BCLs 1835/38; 2070/40; 2133/40; 2138/40; 2206/41, 82-145.]**

(c) It is further provided in said joint rules and regulations that after samples have been drawn such seeds and screenings shall be admitted into the commerce of the U.S. only if they have been found to meet the requirements of the Federal Seed Act of August 9, 1939, and the said regulations, but if the containers bear sufficient marks of identification the district director may release the shipment, pending examination and decision in the matter, upon the giving of a bond. The bond shall be filed with the district director on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter. In case of default the district director shall issue a claim for liquidated damages under the bond. **[BCL 5/29/40. TDs 47281, 50000, 84-213.]**

Viruses, Serums, and Toxins for Treatment of Domestic Animals

§ 12.17 Importation restricted.

The importation into the U.S. of viruses, serums, toxins, and analogous products for use in the treatment of domestic animals is prohibited unless the importer holds a permit from the Department of Agriculture covering the specific product. The district director shall notify the Animal and Plant Health Inspection Service, Veterinary Services, Washington, D.C., of the arrival of any such product, and detain it until he shall receive notice from that Department that a permit to import the shipment has been issued. **[BCL 2276/41. TDs 33575 49476(5), 49905, 52492, 78-99, 89-1.]**

§ 12.18 Labels.

Each separate container of such virus, serum, toxin, or analogous product imported is required by the regulations of the Department of Agriculture to bear the true name of the product and the permit number assigned by the Department of Agriculture in the following form: "U.S. Veterinary Permit No. _____," or an abbreviation thereof authorized by the Animal and Plant Health Inspection Service, Veterinary Services. Each separate container also shall bear a serial number affixed by the manufacturer for identification of the product with the records of preparation thereof, together with a return date. **[TD 53399, 78-99.]**

§ 12.19 Detention; samples.

(a) The district director shall detain all shipments of such products for which no permit to import has been issued pending instructions from the Department of Agriculture. **[TD 33575.]**

(b) Samples shall be furnished to the Department of Agriculture upon its request, and the district director shall immediately notify the consignee of any such request.

§ 12.20 Disposition.

Viruses, serums, or toxins rejected by the Department of Agriculture shall be released by the district director to that Department for destruction, or exported under Customs supervision at the expense of the importer if exportation is authorized by the Department of Agriculture.

Viruses, Serums, Toxins, Antitoxins, and Analogous Products for the Treatment of Man

§ 12.21 Licensed establishments.

The bringing into the U.S. for sale, barter, or exchange, of any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man is prohibited unless such virus, serum, toxin, antitoxin, or other product has been manufactured at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Health and Human Services for such manufacture. (Sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262) **[TDs 29828, 48293, 52492, 69-201, 82-145.]**

§ 12.22 Labels; samples.

Each package of such products imported for sale, barter, or exchange shall be labeled or plainly marked with the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected to yield their specific results. From each lot of product the district director shall select at random at least two final containers. The random sample together with a copy of the associated documents which describe and identify the shipment shall be forwarded to the Director, Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014. For shipments of 20 or less final containers, samples need not be forwarded, provided a copy of an official release from the Bureau of Biologics accompanies each shipment. (Sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262) **[TDs 29828, 48293, 69-201, 82-145.]**

§ 12.23 Detention; examination; disposition.

(a) District directors shall detain all importations of unlicensed viruses, therapeutic serums, toxins, antitoxins, and analogous products, and arsphenamines or its derivatives (or any other trivalent organic arsenic compound) for the treatment or cure of diseases or injuries of man pending examination by the Director, Bureau of Biologics, unless satisfied from evidence furnished at the time of entry that the products are intended solely for purposes of controlled investigation and not for sale, barter, or exchange, as evidenced by a copy of a filed "Notice of Claimed Investigational Exemption for a New Drug," pursuant to § 312.1 of the Food, Drug, and Cosmetic Act Regulations (21 CFR 312.1), or are being imported under the short supply provisions of § 601.22 of the Public Health Service Regulations (4 CFR 601.22). **[29 Op. A. G. 340. TDs 48293, 69-201, 82-145.]**

(b) If the shipment is imported for sale, barter, or exchange and is found by the Director, Bureau of Biologics, to be admissible, the district director shall release it upon receipt of a report from him that the shipment is admissible. **[TDs 69-201, 82-145.]**

(c) If the Director, Bureau of Biologics, reports that the shipment was found upon examination not to conform to

the law and the regulations, the district director shall not release the shipment but shall permit the exportation or destruction thereof under Customs supervision at the option of the importer. **[TDs 52492, 69–201, 82–145.]**

(d) Shipments of such products for use in the treatment of man but made from or with material of animal origin other than human, shall, unless accompanied by a Department of Agriculture, Veterinary Services, Animal and Plant Health Inspection Service (APHIS) permit, be detained until proof is presented to the district director that their importation is not prohibited under 9 CFR Part 94 or Part 122. (Sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262) **[TDs 69–201, 82–145.]**

Domestic Animals, Animal Products, and Animal Feeding Materials

§ 12.24 Regulations of the Department of Agriculture.

(a) The importation into the U.S. of domestic animals, animal products, and animal feeding materials is subject to inspection and quarantine regulations of the Department of Agriculture Customs officers and employees are authorized and directed to perform such functions as are necessary or proper on their part to carry out such regulations of the Department of Agriculture. **[TDs 45782, 50057, 50292, 50311, 50332, 50346, 50407, 50741, 51182, 51499, 51592, 51611, 51745, 51882, 52082, 52231, 52492, 52630, 52678, 78–99, 89–1.]**

(b) Inspection by an inspector of the Animal and Plant Health Inspection Service, Veterinary Services is required for all horses, cattle, sheep, other ruminants, and swine as a prerequisite to their entry from any foreign country. Orders listing the ports designated as quarantine stations for the inspection and quarantine of animals will be issued by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, whenever conditions warrant.

(c) The entry of domestic animals may be made, but shall not be required, before the expiration of the quarantine period. Such animals, if not entered at the time of arrival, shall be considered as under general order while under quarantine and shall not be released except upon notice from the district director that the importer has complied with all the requirements for entry.

Fish, Wildlife and Insects

§ 12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered designated ports of entry; permits required.

(a)(1) The importation into U.S., the Commonwealth of Puerto Rico, and the territories and possessions of the U.S. of live specimens of (i) any species of the so-called "flying fox" or fruit bat of the genus Pteropus; (ii) any species of mongoose or meerkat of the genera Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos, and Suricata; (iii) any species of European rabbit of the genus Oryctolagus; (iv) any species of Indian wild dog, red dog, or dhole of the genus Cuon; (v) any species of multimammate rat or mouse of the genus Mastomys; (vi) any live specimens or egg of the species of so-called "pink starling" or "rosy pastor" Sturnus roseus; (vii) the species of dioch (including the subspecies black-fronted, red-billed, or Sudan dioch) Quelea quelea; (viii) any species of Java sparrow, Padda oryzivora; (ix) the species of red-whiskered bulbul, Pycnonotus jocosus; (x) any live fish or viable eggs of the family *Clariidae;* (xi) any other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulations to be injurious to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the U.S., is prohibited, except as may be authorized by the issuance of a permit by the Director, Fish and Wildlife Service, U.S. Department of Interior, Washington, D.C. 20240, or his authorized representative. If any such prohibited specimen is imported, or if any specie or subspecie of other live or dead fish or wildlife, including any parts, products, or eggs thereof, appearing on the Endangered Species List published by the Fish and Wildlife Service, is imported, Customs release of the prohibited specimen or endangered fish or wildlife shall be refused unless there has been issued and presented in connection with entry a proper Fish and Wildlife Service permit authorizing the import transaction. In the absence of such permit, injurious specimens prohibited entry shall be required to be immediately exported or destroyed. Changes in injurious species and endangered species or subspecies which are prohibited or restricted importation may be published from time to time in 50 CFR Part 13—Importation of Wildlife or Eggs Thereof or in Part 17—Conservation of Endangered Species and Other Fish or Wildlife. Unreleased species or subspecies of live or dead endangered fish or wildlife, including parts, products, or eggs thereof, shall remain under detention subject to seizure and delivery to an appropriate regional director or other agent of the Fish and Wildlife Service for disposition as appropriate pursuant to 50 CFR Part 17. **[TDs 46255, 48173, 52469, 53102, 53866, 66–68, 68–173, 70–15, 70–242, 82–145.]**

(2) Fish and eggs of salmonids of the fish family Salmonidae are prohibited entry into the U.S. for any purpose unless such importations are by direct shipment, accompanied by the signed certification of a qualified fish pathologist in substantially the form as prescribed in 50 CFR 13.7. The following are excepted from the certification requirements: **[TDs 66–68, 68–173, 72–129.]**

(i) Salmon landed in North America and brought into the U.S. for processing or sale;

(ii) Any salmonid caught in the wild in North America under a sport or a commercial fishing license; and

(iii) Fish or eggs of the family Salmonidae when processed or prepared in accordance with 50 CFR 13.7(c), or otherwise exempted from the requirement of certification.

(3) Regulations (50 CFR Part 17) require the importer or his agent to file a Declaration for the Importation of Fish or Wildlife, unless it is an import transaction exempted from the requirement by 50 CFR Part 13 or Part 17. Such declaration on Fish and Wildlife Service Form 3–177, available to importers through Customs ports of entry, shall be filed with the appropriate Customs officer at the port of entry conducting the actual Customs clearance and release of the declared fish, wild mammal, or bird, amphibian, reptile, mollusk, crustacean, or dead body or egg thereof. The declaration on Form 3–177 shall show the common and scientific names, number, and country of origin of all species or subspecies declared, designate and identify any species listed on the U.S. List of Endangered Foreign Fish and Wildlife, 50 CFR Part 17, Appendix A, and indicate whether any species

is subject to laws and regulations in any foreign country regarding its taking, transportation, or sale. See paragraph (g) of this section for special documentation requirements. **[TDs 66-68, 68-173, 70-242, 72-129, 82-145.]**

(4) Federal agencies, subject to requirements in subparagraph (2) of this paragraph, may import solely for their own use live wildlife except migratory birds, or their eggs, without a permit from the Fish and Wildlife Service, upon filing the declaration on Form 3-177. Importation of bald or golden eagles, or their eggs is prohibited. **[TDs 68-173, 82-145.]**

(5) Customs entry for consumption or bonded warehousing of fish and wildlife, as defined in 50 CFR 17.2 (e) and (f), intended for importation into the U.S., or admission into a foreign trade zone, shall be filed at a port of entry among those designated for Customs entry in 50 CFR Part 17, Appendix B. However, Customs entry for consumption or bonded warehousing of shipments subject to emergency diversion or otherwise authorized under regulations or by permit issued by the Fish and Wildlife Service pursuant to 50 CFR Part 17, Appendices B and C, may be filed for examination and release at the ports of entry so named or permitted, but no consumption or bonded warehouse entry shall be filed or accepted at an undesignated port for any endangered specie or subspecie permitted importation pursuant to 50 CFR 17.12 except in the case of an emergency diversion of live endangered fish or wildlife accepted for such entry in accordance with item 2(b) of 50 CFR Part 17, Appendix B. Importations of fish and wildlife subject to regulations of the Fish and Wildlife Service which arrive from abroad at any place in the U.S. not designated as an authorized port for Customs entry, unless occurring under conditions or circumstances in which Customs entry for consumption or bonded warehousing and final clearance has been authorized by Fish and Wildlife Service regulations or permit, may be entered only for immediate transportation without appraisement for movement under Customs bond to one of the designated ports of entry. Customs entry, release, and delivery of any shipment of shellfish and fishery products defined in 50 CFR 17.2(j) imported for commercial purposes is authorized at any port of entry, except insofar as such items include any species or subspecies which appears on the Endangered Species List in 50 CFR Part 17, Appendix A. **[TDs 70-242, 82-145.]**

(b) Permits are required for the importation of wild animals and birds as follows: **[TD 66-68.]**

(1) Wild birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and the regulations promulgated thereunder (50 CFR Part 10), may be imported from foreign countries for scientific, propagating, or other limited purposes only under permits issued by the Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import migratory birds without a permit. Such migratory birds, when imported from Mexico, must be accompanied by Mexican export permits (50 CFR 16.3 and 16.5). **[TDs 53102, 66-68, 82-145.]**

(2) Game mammals (antelopes, mountain sheep, deer, bears, peccaries, squirrels, rabbits, and hares), protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711), dead or alive, or their parts or products, must be accompanied by Mexican export permits (50 CFR 15.3) when imported from Mexico. **[TD 66-68.]**

(3) Wild ruminants (all animals which chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes) and swine (various varieties of wild hogs), except from Canada and certain northern States of Mexico may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, D.C. 20250. Such permits must be obtained before the animals are shipped from the country of exportation. All wild ruminants and swine must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. **[TDs 53102, 53866, 78-99, 89-1.]**

(4) Psittacine birds, which include all birds commonly known as parrots, Amazons, African grays, cockatoos, macaws, parrotlets, beebees, parakeets, lovebirds, lories, lorikeets, and all other birds of the order Psittaciformes, when destined for a zoological park or medical research institution without having had prior confinement and treatment abroad at an approved treatment center, and psittacine birds taken out of the U.S. but inadmissible under paragraph (c) of this section, may be imported when accompanied by a permit issued by the Surgeon General. Application for such a permit may be made to the Chief, Foreign Quarantine Program, National Communicable Disease Center, U.S. Public Health Service, Atlanta, Ga. 30333, or to a Public Health Service quarantine station established at a port of entry in the U.S. **[TDs 53251, 53336, 53399, 68-165.]**

(5) Ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, except from Canada, may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, D.C. 20250. Such permits must be obtained before the birds are shipped from the country of origin. Such birds from Canada must be accompanied by a certificate issued by a Canadian Government veterinarian. All such birds must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. **[TDs 53102, 63866, 78-99, 89-1.]**

(c) Psittacine birds as defined in paragraph (b)(4) of this section, not to exceed two such birds by members of a family comprising a single household in any 12-month period, may be imported under prescribed conditions (see 42 CFR 71.164(e)) without permit and without prior confinement and treatment, to be kept as pets by the owner, who will be required to comply with the Foreign Quarantine Regulations of the U.S. Public Health Service. Birds taken out of the U.S. and being returned may be admitted, without permit, upon full compliance with prescribed conditions of those regulations for admission of birds imported as pets. No such birds shall be released until the importer has complied with applicable requirements of the Public Health regulations. **[TDs 53251, 53336, 68-165.]**

(d) Cats, dogs, and monkeys are subject to the Foreign Quarantine Regulations of the U.S. Public Health Service, Department of Health, Education, and Welfare, Washington, D.C. Such animals shall not be released until the Public Health regulations are complied with by the importer. **[TDs 53336, 89-1.]**

(e) If a shipment contains migratory birds for which a permit is required by the Fish and Wildlife Service of the

Department of the Interior, and such permit is not at hand when the birds arrive, an examination thereof shall be made at once by the district director and any duties estimated to be due shall be collected. A stipulation shall be filed with the district director within 24 hours of the entry to produce the necessary permit within 30 days from the date of entry, whereupon final liquidation shall be suspended until the permit is produced or the 30-day period expires. The shipment may be immediately released if a bond is filed with the district director on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to the entered value plus estimated duties. If the bond conditions are violated the district director shall issue a claim for liquidated damages under the bond. In lieu of filing a bond the merchandise may be left in Customs custody at the risk and expense of the importer pending issuance of the permit. **[TDs 82-145, 84-213.]**

(f) If the permit referred to in paragraph (e) of this section is refused by the Fish and Wildlife Service, or if the permit is not produced within the said 30 days, the district director shall promptly recall the property, if delivered under bond, and shall require its immediate exportation at the expense of the importer or consignee.

(g)(1) All import shipments of fish and wildlife subject to the regulations or permit requirements of the Fish and Wildlife Service, published pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531, or other statutory authority, shall be subject to examination or inspection by that agency's officer serving the port of entry, for determination as to permissible release or such other disposition as he may direct. Customs officers performing examinations of such fish and wildlife in accordance with regulations of the Fish and Wildlife Service in 50 CFR Part 10 and Parts 13-17, shall release shipments only upon submission by the importer of evidence sufficient to establish compliance with those regulations, any applicable permit requirements, and compliance with applicable identification and package or container marking requirements as specified by 50 CFR 17.6(a) and 17.9. In case of doubt as to whether fish, birds, or other wildlife belong to prohibited or endangered species or subspecies or whether an entry permit is required, or in case of suspicion on the part of officers of the Customs that the species sought to be entered are prohibited or endangered species or subspecies imported under other names or descriptions, the importation shall be refused Customs release, and the importer shall be responsible for concluding arrangements acceptable to the regional director or other agent of the Fish and Wildlife Service for proper handling, custody, and care, at the importer's expense and risk, of the unreleased fish, birds, or other wildlife. No Customs disposition of the importation shall be concluded pending the determination by the Fish and Wildlife Service of the true nature of the species or subspecies. In case of refusal or neglect of the importer or consignee, or agent of either, to have the identity so established, final disposition of the importation shall be required as determined by the Fish and Wildlife Service. In addition to Fish and Wildlife Service Form 3-177, required to be filed as prescribed in 50 CFR 17.4 upon entry of importations of fish and wildlife, entrants shall present appropriate foreign export permits, other acceptable foreign documentary evidence of lawful taking, transportation, or sale, or appropriate American consular certificates upon importation of fish and wildlife species or subspecies subject to such documentation requirements of 50 CFR 17.4 (c) and (d). **[TDs 70-242, 82-145.]**

(2) Any antique article imported under § 10.53(g) of this chapter shall be entered at one of the following ports:

Boston, Massachusetts
New York, New York
Baltimore, Maryland, Philadelphia, Pennsylvania
Miami, Florida, San Juan, Puerto Rico
New Orleans, Louisiana
Houston, Texas
Los Angeles, California
San Francisco, California
Anchorage, Alaska, Honolulu, Hawaii
O'Hare International Airport, Chicago, Illinois

[TD 82-148.]

(h) All invoices of animals and birds shall specify the species covered thereby and the number of each species. In the event of the return to the district director of any importation under the bond given under paragraph (e) of this section, if the number and species of birds does not correspond with the description stated in the invoice and if no satisfactory explanation of any discrepancy is furnished, a claim for liquidated damages shall be issued under the bond. **[TD 84-213.]**

(i) The privilege of entry for immediate transportation granted by § 552, Tariff Act of 1930, shall not be allowed for importations of fish, birds, or other wildlife which are confirmed at the port of first arrival or discharge to be injurious prohibited species, or which require permits issued prior to importation, or which are subject to quarantine regulations or inspection at the ports of first arrival or discharge or other specified place of veterinary inspection. However, entry for immediate transportation properly is allowed for any importation of fish, birds, or other wildlife which at the place of first arrival or discharge is not confirmed to be an injurious prohibited specie and which, following compliance with any applicable quarantine regulations or required veterinary inspection, is being transported by means of an in-bond movement to a port of entry designated in 50 CFR Part 17, Appendix B, for Customs entry (see paragraphs (a) and (b) of this section). Ports of designated entry, inspection, quarantine, and related enforcement procedures covering certain animals and poultry and certain animal and poultry products imported into the U.S. are regulated by requirements and standards prescribed in regulations of the Secretary of Agriculture, Department of Agriculture (see 9 CFR Parts 92-96; 19 CFR 12.8 and 12.24). **[TD 70-242.]**

(j) Wild animals and birds shall be imported under humane and healthful conditions, due regard being given to the accommodations and facilities necessary for the species transported.

(k) When any Customs officer has good reason to believe that wild animals or birds have been imported under inhumane or unhealthful conditions in violation of 18 U.S.C. 42, an immediate investigation shall be made to ascertain whether they have in fact been transported under such conditions. The investigation shall determine the provisions made on the vessel or other conveyance for the accommodation of the animals or birds, the suitability of the boxes, cages, stalls, etc., the space, ventilation, and protection from the elements accorded the animals or birds, the facilities for cleaning, feeding, watering, bedding, and such other services as may be required for the species imported. The investigation shall also determine, the physical condition of

such animals or birds and the ratio of dead, crippled, diseased, or starving animals or birds. If necessary, officers of the Animal and Plant Health Inspection Service, Veterinary Services, or Fish and Wildlife Service, or other officers or experts, may be called upon to assist customs officers in the matter. **[TD 78–99.]**

(l) Unless the district director is satisfied that the provisions of 18 U.S.C. 42 have not been violated, he shall report the matter to the U.S. attorney for appropriate action. (Sec. 1, 62 Stat. 687, as amended; 18 U.S.C. 42)

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Customs officers shall perform all duties required of them under statutory provisions that prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs of such birds, killed, captured, taken, transported, etc., contrary to law. Such laws and statutory provisions include 18 U.S.C. 43, 44, 3054, 3112. **[CIE 3745/31. TDs 44467, 48140(13), 49948, 66–68, 89–1.]**

§ 12.28 Importation of wild mammals and birds in violation of foreign law.

No imported wild mammal or bird, or part or product thereof, shall be released from customs custody, except as permitted under § 12.26(i) relating to an in-bond movement to a port designated for wildlife entry, if the district director of Customs has knowledge of a foreign law or regulation obliging enforcement of § 527(a), Tariff Act of 1930 (19 U.S.C. 1527(a)), unless the importation is an excepted transaction entitled to entry under the provisions of § 527(c) of the Tariff Act or, in connection with the entry, there is presented documentation in either manner specified in 50 CFR 17.4(c) (1) or (2) required for import transactions subject to foreign laws or regulations regarding taking, transportation, or sale of wildlife including wild mammals and birds or parts or products thereof (see § 12.26). (80 Stat. 379, 62 Stat. 687, as amended, R.S. 251, sec. 527, 46 Stat. 741; 18 U.S.C. 42, 19 U.S.C. 1527) **[CIEs 2764/31, 3746/31; 71631. TDs 44407, 44412, 44413, 44436, 44437, 44438, 44674, 45860, 46255, 48173, 48349, 48468, 48709, 49103, 49378, 49443, 49475, 49548, 50217, 50260, 50329, 50950, 52073, 52339, 52469, 53005, 53399, 53866, 70–242, 82–145.]**

§ 12.29 Plumage and eggs of wild birds.

(a) The provisions of Chapter 5, additional U.S. Note 1 relating to the plumage of any bird, apply to all such plumage, whether imported separately or upon the bird itself, except (1) the feathers of birds specifically excepted by additional U.S. Note 1 to Chapter 5, HTSUS (2) plumage imported for scientific or educational purposes, (3) fully-manufactured artificial flies used for fishing, (4) plumage on game birds killed in foreign countries by residents of the U.S. and not imported for sale or other commercial purposes, and (5) plumage on live wild birds. **[TDs 33781, 33799, 33995, 34518, 34748, 35307, 38565, 39051, 46255, 47127, 49948, 43066, 53251, 55978, 89–1.]**

(b) The feathers or skins of certain birds may be imported for use in the manufacture of artificial flies used for fishing or for millinery purposes only under a permit issued by the Fish and Wildlife Service, U.S. Department of Interior, Washington D.C. 20240. No feathers or skins of the prospecies provided for by Additional U.S. Note 1, Chapter 5, HTSUS shall be permitted to be entered, or withdrawn from warehouse, for consumption, unless the requisite permit is presented with the entry or withdrawal. **[TDs 53251, 55978, 89–1.]**

(c) The importation of the eggs of wild nongame birds is prohibited except as dead natural history specimens for museum or scientific collection purposes. The eggs of migratory birds may be imported for propagating purposes or for scientific and other limited purposes under permits issued by the Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import the eggs of migratory birds without a permit (50 CFR 16.3). The eggs of certain game or migratory birds imported for hatching, such as ducks, geese, swans, turkeys, pigeons, doves, pheasant, grouse, partridges, quail, guinea fowl, and pea fowl, are subject to the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, D.C. 20250. Such regulations require that permits, except for eggs from Canada offered for entry at certain land border ports, must be obtained before the eggs are shipped from the country of origin and that all eggs shall be accompanied by a certificate issued by a national government veterinarian of the country of origin and inspected at a designated port of entry. **[TDs 52469, 53102, 53866, 66–68, 78–99, 82–145.]**

(d) Upon the attempted importation of eggs of wild birds, the importation of which is prohibited by Chapter 4, additional U.S. Note 2, the eggs shall be seized and the importer accorded an opportunity to assent to forfeiture. In the event the importer refuses or fails to assent to the forfeiture of the prohibited eggs, the district director shall proceed to forfeit them under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500. **[TDs 52469, 53866, 55978, 89–1.]**

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946 (Publication No. 3383, Dept. of State, Whaling Convention), or of the Whaling Convention Act of 1949 (16 U.S.C. 916–916(1), or of any regulation issued under the Act (50 CFR, Part 351) is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law and regulation. **[TDs 49781, 53244, 89–1.]**

§ 12.31 Plant pests.

The importation in a live state of insects which are injurious to cultivated crops, including vegetables, field crops, bush fruits, and orchard, forest or shade trees, and of the eggs, pupae, or larvae of such insects, except for scientific purposes under regulations prescribed by the Secretary of Agriculture, is prohibited. All packages containing live insects or their eggs, pupae, or larvae arriving from abroad, unless accompanied by a permit issued by the Department of Agriculture, shall be detained and submitted to the U.S.

Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs of that Department for inspection and determination of their admissibility into the U.S. **[TD 49476 (5), BCLs 1945/39, 1968/39, 78–99, 82–145, 89–1.]**

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the U.S. by the Department of Agriculture for experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.

(b) Honeybee semen may be imported into the U.S. only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undesirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the ***Federal Register*** from time to time. **[TDs 44908, 51789, 52492, 82–145, 85–3, 89–1.]**

Tea

§ 12.33 Importation of tea; entry; examination for customs purposes.

(a) The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards prescribed by the Act of March 2, 1897, as amended (21 U.S.C. 41–50), is prohibited. Customs officers and employees shall perform all duties required of them by the said act and regulations. **[TDs 21439, 24874, 25903, 35244, 38470, 42344, 51666, 52492, 52543, 53399. CIE 450/40, 78–99, 89–1.]**

(b) The importation of tea is subject also to the provisions of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. See §§ 12.1 to 12.5.

(c) Reserved. TD 84–213.

(d) The district director may order such an examination of packages containing tea as will satisfy him that no dutiable goods are packed therein. For this purpose the customary designation shall be made of packages for examination in public stores.

(e) If the invoice has not been received, the importer may use an additional copy of the chop list and release permit required by the regulations of the Department of Health, Education, and Welfare as a pro forma invoice, marking "Pro forma invoice" across the face thereof. **[TDs 53869, 55629.]**

White Phosphorus Matches

§ 12.34 Importation prohibited; certificate of inspection; importer's declaration.

(a) The importation into the U.S. of white phosphorus matches is prohibited. **[TDs 32975, 55978, 89–1.]**

(b) Invoices covering matches imported into the U.S. shall be accompanied by a certificate of official inspection of the Government of the country of manufacture in the following form:

Certificate of Official Inspection of Matches

I, _____(Name), do hereby certify that I am the _____ (Official title), that according to the chemical analysis made by me the matches described below do not contain white or yellow phosphorus and that therefore they are not white phosphorus matches as defined in the Act of Congress of the U.S. of America approved April 9, 1912;

Numbers of case mark	Description of matches	Name and address of manufacturing	Name of consignee and address listed and date of shipment
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

_____ (Signature)

_____ (Official title)

[TDs 33127, 33360, 54056.]

(c) In the absence of such certificate, the matches shall be detained until a certificate is produced or the importer submits satisfactory evidence to show that the matches were not in fact manufactured with the use of poisonous white or yellow phosphorus.

(d) The production of the above certificate shall not be required on the entry of matches manufactured in countries which prohibit the use of white or yellow phosphorus in the manufacture of matches. **[TDs 33158, 33248, 33399, 33441, 33804, 35276, 39014, 40067, 43300, 43438.]**

(e) At the time of filing an entry for imported matches, the importer shall make a declaration that to the best of his knowledge and belief no matches included in the invoice and entry are white phosphorus matches. (Sch. 7, pt. 9A, hdnote. 1, Tariff Schedules of the United States.)

§ 12.35 Reserved **[TD 82–145.]**

Narcotic Drugs

§ 12.36 Regulations of Bureau of Narcotics.

The importation and exportation of narcotic drugs are governed by regulations of the Drug Enforcement Administration Bureau of Narcotics. Customs officers and employees shall perform all duties imposed upon them by such regulations and the laws under which they are issued. Such regulations are in addition to, and not in lieu of, the Customs, internal-revenue, and other pertinent laws and regulations. **[TDs 5191, 34221, 35080, 38381, 39055, 39154, 39308, 39503, 39618, 52492, 78–99, 89–1.]**

Liquors

§ 12.37 Restricted importations.

(a) The basic permit requirements prescribed by the act of August 29, 1935 (27 U.S.C. 203), shall not be deemed applicable when the district director is satisfied that the liquor is for personal use or for experimental purposes in the making of analyses, tests, or comparisons. **[TDs 47855, 52469, 53399, 78–329, 89–1.]**

(b) The production of a basic permit shall not be required when spirits are withdrawn from warehouse under any form of withdrawal entry.

(c) Blending or rectifying of wines or distilled spirits in class 6 manufacturing warehouses, or the bottling of imported distilled spirits in class 8 manipulation warehouses, shall not be permitted unless the proprietor has obtained an appropriate permit from the Bureau of Alcohol, Tobacco, and Firearms. (Sec. 3, 49 Stat. 978, as amended; 27 U.S.C. 203.)

§ 12.38 Labeling requirements; shipments.

All shipments of liquor not labeled as required by 18 U.S.C. 1263 and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U.S.C. 3615[25] (see 171.22(b) of this chapter). **[FAA TD 6. TDs 30393, 47855, 48448, 48711, 52025, 52469, 70–249, 82–145, 89–1.]**

Unfair Competition

§ 12.39 Imported articles involving unfair methods of competition or practices.

(a) *Determinations of the International Trade Commission.*—Under § 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the U.S., are unlawful. After an investigation of an alleged violation of § 337, the U.S. International Trade Commission ("the Commission") may determine that § 337 has been violated. The Commission also may determine during the course of its investigation that there is reason to believe that a violation of § 337 exists. The Commission's determination in either case is effective on the date of its publication in the ***Federal Register*** and is referred to the President, who may disapprove the determination for policy reasons on or before the close of a 60-day period beginning on the day after the day he receives a copy of the determination. A Commission determination disapproved by the President shall have no force or effects as of the date the Commission is notified of his disapproval. If the Commission's determination is not disapproved by the President during the 60-day period, or if he notifies the Commission before the close of the period that he approves the determination, the determination becomes final on the day after the close of the period or the day of the notification, whichever is earlier. **[TDs 41655, 42257, 42801, 44411, 44491, 44675, 44776, 44977, 47001, 47168, 47179, 47225, 47393, 47571, 48121, 48129, 48385, 48628, 48845, 50082, 51238, 72-327, 79-231.]**

(b) *Exclusion from entry; entry under bond.*—(1) If the Commission finds a violation of § 337, or reason to believe that a violation exists, it may direct the Secretary of the Treasury to exclude from entry into the U.S. the articles concerned which are imported by the person violating or suspected of violating § 337. The Commission's exclusion order remains in effect until the Commission determines, and notifies the Secretary of the Treasury, that the conditions which led to the exclusion no longer exist, or until the determination of the Commission on which the order is based is disapproved by the President.

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount determined by the International Trade Commission. However, on or after the date that the Commission's determination of a violation of § 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination shall be refused entry.

(3) District directors shall notify each importer or consignee of articles released under bond pursuant to paragraph (b)(2) of this section when the Commission's determination of a violation of § 337 becomes final and that entry of the articles is refused. The importer or consignee shall export or destroy the released articles under Customs supervision within 30 days after the date of notification. The district director who released the articles shall assess liquidated damages in the full amount of the bond if the importer or consignee fails to export or destroy the released articles under Customs supervision within the 30-day period. **[TDs 45474, 72-231, 79-231, 84-213.]**

(c) *Certain importations by or for the U.S.*—Any exclusion from entry under § 337 based on claims of U.S. letters patent shall not apply to articles imported by and for the use of the U.S., or imported for, and to be used for, the U.S. with the authorization or consent of the Government. (Secs. 337, 623, 46 Stat. 703, as amended, 759, as amended; 19 U.S.C. 1337, 1623) **[TDs 44675, 48154, 72-327, 72-231, 79-231.]**

(d) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have Customs deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C. 1337), excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by Customs under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, Washington, DC 20229.

(2) The district director shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with Part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901–904). **[TD 87-132.]**

§ 12.39a Registered patent owners; import survey.

(a) When the owner of a patent registered in the U.S. believes that merchandise is being imported into the U.S. which infringes such patent, an application for a survey to assist the patent owner in taking appropriate action may be made. The purpose of the survey is to provide the patent

owner with the names and addresses of importers of merchandise which appears to infringe the registered patent. **[TDs 56137, 72-327.]**

(b) The application may be made by letter addressed to the Commissioner of Customs, U.S. Customs Service, Washington, D.C. 20229. It shall state the name and address of the patent owner; and if available, a description of the merchandise believed to infringe the registered patent and the country of manufacture of the merchandise. A certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed; 3 additional copies of the patent registration for Customs files, and a check or money order to cover the fee prescribed by § 24.12(a)(3) of this chapter for the survey selected shall be submitted with the application. **[TD 84-133.]**

(c) Surveys will be made for periods of 2, 4 or 6 months at the option of the applicant.

Immoral Articles

§ 12.40 Seizure; disposition of seized articles; reports to U.S. attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the U.S. or forcible resistance to any law of the U.S., or containing any threat to take the life of or inflict bodily harm upon any person in the U.S., seized under § 305, Tariff Act of 1930, shall be transmitted to the U.S. attorney for his consideration and action. **[U.S. v. One Package, 86 Fed. (2d) 737. TDs 53268, 71-165.]**

(b) Upon the seizure of articles or matter prohibited entry by § 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee. **[TD 53399.]**

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed. **[TDs 44293, 44766, 53866, 76-261.]**

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the U.S. attorney for consideration of prosecution of the offender as well as an action in rem under § 305 for condemnation of the articles. **[TD 52025.]**

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action. **[TD 85-186.]**

(f) If seizure is made of books or of other articles which do not contain obscene matter but contain information or advertisements relative to means of causing unlawful abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed. **[TDs 71-165, 82-145.]**

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee. **[TDs 42907, 43600, 44342, 44884(7), 46042(1), 47412.]**

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for inducing abortion, such drug or medicine shall be detained or seized. (Secs. 305, 624, 46 Stat. 688, as amended, 759; 19 U.S.C. 1305, 1624) **[TD 71-165.]**

§ 12.41 Prohibited films.

(a) Importers of films, shall certify on Customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the U.S. or forcible resistance to any law of the U.S., nor any threat to take the life or inflict bodily harm upon any person in the U.S. When imported films are claimed to be free of duty as American goods returned, this certification may be made on Customs Form 3311 in the space designated "Remarks" in lieu of on Form 3291. **[TDs 53268, 53336.]**

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from Headquarters, U.S. Customs Service or a decision of the court as to its final disposition. (Sec. 305, 46 Stat. 688, as amended; 19 U.S.C. 1305)

Merchandise Produced By Convict, Forced, or Indentured Labor

§ 12.42 Findings of Commissioner of Customs.

(a) If any district director or other principal Customs officer has reason to believe that any class of merchandise which is being, or is likely to be, imported into the U.S. is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of the first sentence of § 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs. Every such communication shall

contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the district director or other officer or readily available to him. **[TDs 33889, 44385, 45357, 53408, 53953, 89–1.]**

(b) Any person outside the Customs Service who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the U.S. and, if the production is with the use of forced labor or indentured labor under penal sanctions, that merchandise of the same class is being produced in the U.S. in such quantities as to meet the consumptive demands of the U.S. may communicate his belief to any district director or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad. If the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, such communication shall also contain (4) detailed information as to the production and consumption of the particular class of merchandise in the U.S. and the names and addresses of domestic producers likely to be interested in the matter.

(c) If any information filed with a district director pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the district director within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the district director. **[TD 53953.]**

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of § 307 is being, or is likely to be, imported, he will promptly advise all district directors accordingly and the district directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said § 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to that effect in a weekly issue of the ***Customs Bulletin*** and in the ***Federal Register***. **[TD 54132.]**

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specified in the findings and has not been released from Customs custody before the date of publication of such finding in the ***Federal Register*** shall be considered and treated as an importation prohibited by § 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding. **[TD 54725.]**

(h) The following findings made under the authority of § 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below: (Sec. 307, 46 Stat. 689; 19 U.S.C. 1307) **[TDs 52655, 54132, 55342.]**

Merchandise	Country	T.D.
Furniture, clothes hampers, and palm leaf bags.	Ciudad Victoria, Tamaulipas, Mexico.	53408, 54725

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42(e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in § 307, Tariff Act of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the U.S., an additional certificate in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted. **[TDs 53953, 54056.]**

Certificate of Origin

I, _____, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of _____(Quantity) of _____(Description) in _____(Number and kind of packages) bearing the following marks and numbers _____was mined, produced, or manufactured _____(Place of lading) (Place of final departure from country of exportation) which departed from on _____; (Date); and that _____(Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated _____

_____
(Signature)

(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statements specified in paragraphs (a) and (b) of this section are submitted

within the time prescribed and the Commissioner finds that the merchandise is admissible, the collector of customs concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements. (Sec. 307, 46 Stat. 689; 19 U.S.C. 1307)

§ 12.44 Disposition.

Merchandise detained pursuant to § 12.42 may be exported at any time before it is deemed to have been abandoned as hereinafter provided for. If it has not been exported within 3 months after the date of importation, the district director shall ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been so submitted, or if the Commissioner of Customs advises the district director that the proof furnished does not establish the admissibility of the merchandise, the district director shall promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the district director, the merchandise shall be deemed to have been abandoned and shall be destroyed, unless it has been exported or a protest has been filed as provided for in § 514, Tariff Act of 1930. (Sec. 307, 46 Stat. 689; 19 U.S.C. 1307) **[TD 53953.]**

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of § 1761 or 1762, title 18, United States Code, with respect to any imported article comes to the attention of a district director, he shall detain the article and report the facts to the appropriate U.S. attorney. If the U.S. attorney advises the district director that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the U.S. attorney or the court. **[TDs 53953, 89–1.]**

Counterfeit Coins, Obligations, and Other Securities; Illustrations or Reproductions of Coins or Stamps

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the U.S. or of a foreign country; counterfeits of coins in circulation in the U.S.; counterfeited, forged, or altered obligations or other securities of the U.S. or of any foreign government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the U.S., shall be seized, and delivered to the nearest representative of the U.S. Secret Service, together with a report of the facts, for appropriate disposition. **[TDs 25403, 29444, 52025, 52469, 53399. 20 Op. A. G. 697; 21 Op. A. G. 136, 89–1.]**

(b) In accordance with § 504 of title 18, United States Code, the printing, publishing, or importation or the making or importation of the necessary plates for such printing or publishing for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums) of black and white illustrations of canceled and uncanceled U.S. postage stamps shall be permitted. **[TD 54970.]**

(c) The importation (but not for advertising purposes except philatelic advertising) of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the U.S. and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation shall be permitted. **[TD 54970.]**

(d) Printed matter of the character described in § 504, title 18, United States Code, containing reproductions of postage or revenue stamps, executed in accordance with any exception stated in § 504, or colored reproductions of canceled foreign postage stamps may be admitted to entry. Printed matter containing illustrations or reproductions not executed in accordance with such exceptions shall be treated as prohibited importations. If no application for exportation or assent to forfeiture and destruction is received by the district director within 30 days from the date of notification to the importer that the articles are prohibited, the articles shall be reported to the U.S. attorney for forfeiture. **[TDs 31917, 42736, 52970, 53399, 54970, 89–1.]**

Fur-Seal or Sea-Otter Skins

§ 12.60 Importation prohibited.

The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited if such skins were taken contrary to the provisions of § 2 of the act of February 26, 1944 (58 Stat. 100–104) or, the case of such skins taken under the authority of the act or any fur-seal agreement, if the skins are not officially marked and certified as required by § 2 of the act. Sec 16 makes the act inapplicable to skins taken for scientific purposes under a special permit. **[TDs 51274, 89–1.]**

§ 12.61 Fur-seal or sea-otter skins permitted entry.

(a) Fur-seal or sea-otter skins taken by Indians, Aleuts, or other aborigines under the authority of § 3 of the act, fur-seal skins taken under the authority of the Canadian Government, and fur-seal skins taken on the Pribilof Islands and other specified areas under the authority of § 4 of the act shall be admitted to entry if officially marked and certified as having been lawfully taken and if accompanied by a declaration of the shipper identifying the skins by marks and numbers as those covered by the official certificate. **[TDs 51274, 53268.]**

(b) Fur-seal or sea-otter skins taken in waters or on land not specified in the act or in the fur-seal agreement with Canada or other fur-seal agreement shall be admitted to entry upon the production of evidence satisfactory to the district director that they have been so taken. **[TD 89–1.]**

§ 12.62 Enforcement; duties of Customs officers.

(a) In accordance with the authority contained in §§ 10 and 12 of the act, Customs officers shall arrest or cause to be arrested persons violating the provisions of the act or of any regulation made pursuant thereto; shall search vessels when there is reasonable cause to believe that such vessels are subject to seizure under the act, shall seize any vessel used or employed or which it appears has been or is about to be used or employed in violation of the act or any

regulation made pursuant thereto; and shall seize fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed by any person contrary to the provisions of the act or of any regulation made pursuant thereto. [TDs 51274, 89–1.]

(b) All articles, including vessels and equipment, seized by Customs officers for violation of the act shall be turned over to the nearest officer or agent of the Fish and Wildlife Service, Department of the Interior, for appropriate disposition under the act, receipts to be taken in duplicate therefor. One copy of each such receipt shall be transmitted to Headquarters, U.S. Customs Service with a detailed report of the facts in the particular case involved. (Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631g.)

§ 12.63 Seal-skin or sea-otter-skin waste.

Seal-skin or sea-otter-skin waste composed of small pieces not large enough to be sewed together and utilized as dressed fur shall not be subject to the requirements of the regulations in this part. (Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631g.) [TD 51975.]

Entry of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act, as Amended

§ 12.73 Motor vehicle and engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85 and 86. Those regulations should be consulted for more detailed information concerning EPA emission requirements. The requirements apply to imported motor vehicles, but do not apply to separately imported nonchassis mounted engines to be used in light-duty trucks or other light-duty vehicles. Other separately imported engines for heavy-duty motor vehicles are covered, and all references in this section to motor vehicles should be deemed to include motor vehicles as well as these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles*—(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's lable showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) *Pending certification.* Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance*—(1) *Vehicles of returning residents.* Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists.* A district director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(3) *Participants in EPA-approved catalytic converter or oxygen sensor control programs.* Further evidence of emissions compliance will not be required for catalytic converter or oxygen sensor-equipped vehicles imported for participating in EPA-approved catalytic converter or oxygen sensor control programs and subject to the requirements of those programs.

(4) *Previously labeled, modified or imported vehicles.* Any other vehicle of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor, will not be deemed in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. Conditional release from Customs custody for the purpose of the modification is subject to a 120-day period for completion. Subject to special documentation at the time of export from the United States and approval and other requirements of EPA, replacement of a catalytic converter or oxygen sensor may be avoided if the equipment is disconnected before export from the United States and reconnected after subsequent importation.

(d) *Importation of vehicles by ICI's.* Except for motor vehicles imported in the applicable circumstances covered by paragraphs (c), (e), (f), (g) or (h) of this section, an individual or business other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity may not enter a motor vehicle to which EPA emission requirements apply. An ICI, subject to the more specific definition in EPA regulations, is an importer which does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market. However, a motor vehicle may not be conditionally admitted unless it falls within one of the categories provided for in 40 CFR 85.1505 or 85.1509. Before the vehicle is deemed to be in compliance with applicable emission requirements and, therefore, finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-working day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-working day period is part of the 120-day period in which an ICI must bring the vehicle into emissions compliance. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles, except as shown, may be imported by any person and do not have to be shown to be in compliance with emission requirements or modified before entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Motorcycles manufactured before January 1, 1978;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwise exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States, and both the vehicle and its container bear a label or tag indicating that it is intended solely for export, is exempt from applicable United States emission requirements. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a nonresident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(4) of this section.

(h) *Exemptions and exclusions based on prior EPA authorization.* The following motor vehicles are exempt or excluded from applicable emission requirements if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* Any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* Any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* Any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it shall be exported or otherwise disposed of subject to paragraph (1) of this section;

(4) *Display vehicles.* Any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4);

(5) *Racing cars.* Any motor vehicle which qualifies as a racing vehicle meeting one or more of the criteria found at 40 CFR 85.1703(a), and which will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(c)(1);

(6) *National security importations.* Any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(2), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* Any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(3).

(i) *Documentation requirements*—(1) *Exception for manufacturers.* The special documentation requirements of this paragraph do not apply to the entry of any motor vehicles shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all other entries unless there is filed with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status, and further declares or affirms the status or condition of the imported vehicles and the circumstances concerning importation including a citation to the specific paragraph or subparagraph in this section upon which application for conditional or final release from Customs custody is applied for.

(3) *Other documentation and information.* An importer's declaration shall include or be submitted with the following further information and documentation:

(A) The importer's name and address and telephone number;

(B) Identification of the vehicle or engine number, the vehicle owner's taxpayer identification number, and his or her current address and telephone number in the United States if different than as provided for in paragraph (3)(A) of this paragraph;

(C) Identification, where applicable, of the place where the vehicle will be stored until EPA approval of the importer's application to EPA for final admission as required for vehicles imported under 40 CFR 85.1505, 85.1509, or 85.1512 having reference to certain importations under paragraphs (c)(4) or (d)(1) of this section;

(D) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(E) Identification, where applicable, of the certificate of conformity by means of which the vehicle is being imported;

(F) The date of manufacture of the vehicle;

(G) The date of entry;

(H) Identification of the vessel or carrier on which the merchandise was shipped;

(I) The entry number where applicable;

(J) Where prior EPA authorization is required for an exemption or exclusion, a copy of that authorization; and

(K) Such other further information as may be required by the EPA or the Customs Service.

(4) *Documentation from diplomats and foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, there must also be

attached to the declaration required under paragraph (i)(2) of this section a copy of the motor vehicle importer's official orders, if any, or if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(j) *Released under bond.* If a declaration filed in accordance with paragraph (i)(2) of this section states that the entry is being filed under circumstances described in either paragraph (c)(4), (h)(1), (h)(2), (h)(3) or (h)(4) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond condition set forth in § 113.62 of this chapter for the production of an EPA statement that the vehicle or engine is in conformity with Federal emission requirements. Within the period in paragraph (h)(2), (h)(3), or (c)(4) of this section, or in the case of paragraph (h)(1) or (h)(4) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the district director of Customs may allow for good cause shown, the importer or consignee shall deliver to the district director the prescribed statement. If the statement is not delivered to the district director for the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the district director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from Customs custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle shall be held in detention by the district director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-day extension may be granted by the district director upon application for good cause shown. If at the expiration of a period not over 60 days the documentation has not been filed, a notice of inadmissibility will be issued.

(l) *Disposal of vehicles not entitled to admission.* A motor vehicle denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 80, 85, 86 and 600 is prohibited. **[TDs 67-196, 72-45, 74-227, 82-145, 84-213, 86-203, 88-40.]**

Motor Vehicles and Motor Vehicle Equipment Manufactured On or After January 1, 1968

§ 12.80 Federal motor vehicle safety standards.

(a) *Standards prescribed by the Department of Transportation.*—Motor vehicles and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate commerce, or importation into the U.S. are subject to Federal motor vehicle safety standards ("safety standards") prescribed by the Secretary of Transportation under §§ 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1392, 1407) ("the act"), and set forth in 49 CFR part 571. A motor vehicle ("vehicle") or item of motor vehicle equipment ("equipment item"), manufactured on or after January 1, 1968, is not permitted entry into the Customs territory of the U.S. unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured. **[TDs 68-16, 68-305, 71-122, 74-227, 78-478.]**

(b) *Requirements for entry and release.*

(1) Unless the requirement for filing is waived by the district director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the U.S. shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following:

(i) The vehicle or equipment item was manufactured on a date when no applicable safety standards were in effect.

(ii) The vehicle or equipment item conforms to all applicable safety standards (or, the vehicle does not conform solely because readily attachable equipment items which will be attached to the vehicle before it is offered for sale to the first purchaser for purposes other than resale are not attached) and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or to the equipment item, or to the outside of the container in which the equipment item is delivered, in accordance with regulations issued by the Secretary of Transportation (49 CFR Parts 555, 567, 568, and 571) under § 114 of the act (15 U.S.C. 1403).

(iii) The vehicle or equipment item was not manufactured in conformity with all applicable safety standards, but it has been or will be brought into conformity. Within 120 days after entry, or within a period not to exceed 180 days after entry, if additional time is granted by the Administrator, National Highway Traffic Safety Administration ("Administrator, NHTSA"), the importer or consignee will submit a true and complete statement to the Administrator, NHTSA, identifying the manufacturer, contractor, or other person who has brought the vehicle or equipment item into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity, and that the vehicle or equipment item will not be sold or offered for sale until the Administrator, NHTSA, issues an approval letter to the district director stating that the vehicle or equipment item described in the declaration has been brought into conformity with all applicable safety standards **[TD 84-213.]**

(iv) The vehicle or equipment item is intended solely for export, and the vehicle or equipment item, and the outside

of the container of the equipment item, if any, bears a label or tag to that effect.

(v) The importer or consignee is a nonresident of the U.S., is importing the vehicle or equipment item primarily for personal use for a period not exceeding 1 year from the date of entry, will not sell it in the U.S. during that period, and has stated his passport number and country of issue, if he has a passport, on the declaration.

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration). **[TD 86-203.]**

(vii) The vehicle or equipment item is imported solely for the purpose of show, test, experiment, competition (a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public roads is considered to be imported for the purpose of competition), repair, or alteration, and the statement required by 19 CFR 12.80 (c)(2) or (c)(3) is attached to the declaration.

(viii) The vehicle was not manufactured primarily for use on the public roads and is not a "motor vehicle" as defined in § 102 of the act (15 U.S.C. 1391).

(ix) The vehicle is an "incomplete vehicle" as defined in 49 CFR part 568.

(2) A vehicle imported solely for the purpose of test or experiment which is the subject of a declaration filed under paragraph (b)(1)(vii) of this section may be licensed for use on the public roads for a period not to exceed 1 year from the date of importation if use on the public roads is an integral part of the test or experiment. The vehicle may be licensed for use on the public roads for one or more further periods which, when added to the initial 1-year period, shall not exceed a total of 3 years, upon application to and approval by the Administrator, NHTSA.

(c) *Declaration; contents.*

(1) Each declaration filed under paragraph (b)(1) of this section shall include the name and address in the U.S. of importer or consignee, the date and the entry number (if applicable), the make, model, and engine and body serial numbers, or other identification numbers (if a vehicle), or a description of the item (if an equipment item), and shall be signed by the importer or consignee.

(2) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle or equipment item imported for the purpose of show, competition, repair, or alteration shall have attached a statement fully describing the use to be made of the vehicle or equipment item and its ultimate disposition.

(3) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle imported solely for the purpose of test or experiment shall have attached a statement fully describing the test or experiment, the estimated period of time necessary to use the vehicle on the public roads, and the disposition to be made of the vehicle after completing of the test or experiment.

(4) Any declaration filed under paragraph (b)(1) of this section may, if appropriate, relate to more than one vehicle or equipment item imported on the same entry.

(d) *Declaration; disposition.*—The district director shall forward the original of each declaration submitted to him under paragraph (b)(1) of this section as soon as practicable to the Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Washington, D.C. 20590.

(e) *Release under bond.*

(1) If a declaration is filed under paragraph (b)(1)(iii) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An approval letter shall be issued upon approval by the Administrator, NHTSA, of the conformity statement submitted by the importer or consignee as provided for in paragraph (b)(1)(iii) of this section. The approval letter shall be forwarded by the Administrator, NHTSA, to the district director with a copy to the importer or consignee. Upon receipt of the approval letter the district director shall cancel the charge against the bond. **[TD 84-213.]**

(2) If the approval letter is not received by the district director within 180 days after entry, the district director shall issue a "Notice of Redelivery," Customs form 4647, requiring the redelivery to Customs custody of the vehicle or equipment item. If the vehicle or equipment item is not redelivered to Customs custody or exported under Customs supervision within the period allowed by the district director in the notice of redelivery, liquidated damages shall be assessed in the full amount of a bond if it is a single entry bond or if a continuous bond is used, the amount that would have been taken under a single entry bond. **[TD 84-213.]**

(f) *Waiver of declaration requirements.*—The requirement that a declaration be filed under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the U.S. may be waived by the district director for a U.S.-, Canadian-, or Mexican-registered vehicle arriving via land borders.

(g) *Vehicle or equipment item introduced by means of a fraudulent or false declaration.*—Any person who enters, introduces, attempts to enter or introduce, or aids or abets the entry, introduction, or attempted entry or introduction, of a vehicle or equipment item into the Customs territory of the U.S. by means of a fraudulent entry declaration, or by means of a false entry declaration made without reasonable cause to believe the truth of the declaration, may incur liabilities under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(h) *Vehicle or equipment item denied entry.*—If a vehicle or equipment item is denied entry under the provisions of paragraph (b) of this section, the district director shall refuse to release the vehicle or equipment item for entry into the Customs territory of the U.S. and shall issue a notice of that refusal to the importer or consignee.

(i) *Disposition of vehicle or equipment item denied entry; redelivery.*—A vehicle or equipment item denied entry under paragraph (b) of this section, or redelivered to Customs custody under paragraph (e) of this section, which is not exported under Customs supervision within 90 days from the date of the notice of denial of entry or date of redelivery, shall be disposed of under applicable Customs laws and regulations, except that disposition shall not result in the

introduction of the vehicle or equipment item into the Customs territory of the U.S. in violation of the act.

Safety Standards for Boats and Associated Equipment

§ 12.85 Coast Guard boat and associated equipment safety standards.

(a) *Applicability of standards or regulations prescribed by the Commandant, U.S. Coast Guard.* Boats and associated equipment (as hereinafter defined) are subject to U.S. Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the U.S. after November 1, 1972. Those regulations or standards are prescribed by the Commandant, U.S. Coast Guard, pursuant to §§ 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 CFR Parts 181, 183. **[TD 76-166.]**

(1) The term "boats" includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or chartered to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see § 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of § 12.85 the term "boat" does not include:

(i) Foreign vessels temporarily using waters subject to U.S. jurisdiction.

(ii) Military or public vessels of the U.S., except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats.

(3) The term "associated equipment" means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by a person on board a boat (excluding radio equipment).

(4) The term "product" as used in this section, includes the terms "boats" and "associated equipment" as defined in paragraphs (a) (1), (2), and (3) of this section.

(b) *Evidence of compliance with boating standards or regulations as condition of entry.* A product for which entry is sought into the Customs territory of the U.S. will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

(1) A product subject to standards prescribed in 33 CFR Part 183 will have affixed to it a compliance certification label in accordance with the requirements of Subpart B, 33 CFR Part 181.

(2) A boat hull subject to Subpart C, 33 CFR Part 181 will have affixed to it a hull identification number affixed by the importer or the original manufacturer. The number shall comply with the format requirements of Subpart C, 33 CFR Part 181.

(c) *Products not in compliance with standards or regulations: Alternative evidence required as condition of entry and release.* Certain products shall be permitted entry and release without a compliance certification label or hull identification number affixed, as is required by Subparts B and C, 33 CFR Part 181, if they fall within one of the following categories, and if the conditions for entry and release specified for each category of product are met:

(1) *Products manufactured before standards or regulations in effect.* For certain products manufactured before an applicable standard or regulation was in effect, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the product was manufactured before the applicable standard or regulation was in effect. If the district director believes that it is necessary in a particular case, he may communicate with the nearest Coast Guard district commander by the most expedient means to request that the Coast Guard determine that alteration of the product is not required. **[TD 82-220.]**

(2) *Products exempted from standards or regulations by Coast Guard Grant of Exemption.* For certain products specifically exempted from applicable standards or regulations by a Coast Guard Grant of Exemption, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product has been specifically exempted from applicable standards or regulations by a U.S. Coast Guard Grant of Exemption, issued under the authority of § 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1458), and in effect on the date the product was manufactured. The declaration will also state that the product complies with all the terms and conditions of the exemption. A copy of the exemption, certified by the importer or consignee to be a true copy, shall be attached to each declaration.

(3) *Products to be brought into conformity.* In the case of products that are not in conformity at the time of entry but will be brought into conformity, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the U.S. and on the high seas beyond the territorial seas for a vessel owned in the U.S. except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the U.S. for repair or alteration.* In the case of a nonresident of the U.S. who wishes to enter a product for the purpose of making repairs or alterations to it for a period not exceeding 1 year from the date of entry, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is a nonresident of the U.S., that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the U.S. for more than 1 year following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the U.S. during that time. **[TD 82-220.]**

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale. **[TD 86-203.]**

(6) *Certain products entered for tests, experiments, exhibits, or races.* An importer or consignee seeking to enter a product for period not to exceed 1 year, for tests, experiments, exhibits, or races but not for sale in the U.S., shall file a declaration in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is importing the product solely for the stated purpose and that it will not be sold or operated in the U.S., unless the operation is an integral part of the stated use for which the product was imported. The importer or consignee shall attach to the declaration a description of use for which the product is being imported, the time period estimated for completion, and disposition to be made of the product after completion. Entry under this paragraph may be authorized for a period not to exceed 1 year from the date of importation. However, this period may be extended at the discretion of the district director for one or more additional periods which, when added to the initial 1-year period, shall not exceed a total of 3 years. **[TD 82-220.]**

(d) *Declaration requirements.* All declarations submitted must:

(1) Be filed at the time of entry, in duplicate on Form CG-5096.

(2) Be signed by the importer or consignee.

(3) State the name and U.S. address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, or date of manufacture if hull identification number not affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or state in which the product will be principally located.

(7) Be sent by the district director, to the Commandant [G-BBS-1/42], U.S. Coast Guard, Washington, D.C. 20593. **[TD 82-220.]**

(e) *Release under bond*—(1) *When bond required.* A bond will be required of the importer or consignee on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in such amount as the district director deems appropriate, when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the U.S. and on the high seas beyond the territorial seas for a vessel owned in the U.S. and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the importer or the consignee that the product described in the declaration is in conformity with applicable safety standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed. **[TD 84-213.]**

(2) *Time limitation to produce statement for which bond is obligated.* Within 180 days after entry, the importer or consignee shall deliver to both the district director and the Commandant, U.S. Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the district director for the port of entry of the product within 180 days after the date of entry, the importer or consignee shall deliver or cause to be delivered to the district director the product that was released in accordance with this paragraph. **[TD 82-220.]**

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by subparagraph (2) of this paragraph, liquidated damages shall be assessed in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. **[TD 84-213.]**

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the district director shall refuse to release the product for entry into the U.S. and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the U.S.; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the U.S. of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451-1489). (Sec. 623, 46 Stat. 759, as amended, secs. 5, 6, 7, 11, 15, 85 Stat. 215, 216, 217, 219 (19 U.S.C. 1623, 46 U.S.C. 1454, 1455, 1456, 1460, 1464) R.S. 251, as amended, secs. 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 66, 1624).)

Electronic Products

§ 12.90 Definitions

As used in §§ 12.90 and 12.91, the term "the Act" shall mean the Public Health Service Act (42 U.S.C. 201 *et seq.*) as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*), and as further amended from time to time. **[TD 83-235.]**

§ 12.91 Electronic products offered for importation under the Act.

(a) *Standards prescribed by the Department of Health and Human Services.* Electronic products offered for importation into the customs territory of the U.S. are subject to standards prescribed under § 358 of the Act (42 U.S.C. 263f) unless intended solely for export. Prescribed standards shall not apply to any electronic product intended solely for export if:

(1) Such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that it is intended for export, and

(2) Such product meets all the applicable requirements of the country to which it is intended for export.

(See 21 CFR, Chapter I, Subchapter J.)

(b) *Requirements for entry and release.* Electronic products subject to standards in effect under § 358 of the Act (42 U.S.C. 263f), when offered for importation into the customs territory of the U.S., shall be refused entry unless there is filed with the entry, in duplicate, a declaration (FDA Form FD 2877) verified by the importer of record which identifies the products and affirms:

(1) That the electronic products were manufactured before the date of any applicable electronic product performance standard (the date of manufacture shall be specified); or

(2) That the electronic products comply with all standards in effect under § 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), and that the certification required by § 360 of the Act (42 U.S.C. 263h) in the form of a label or tag is attached to the product; or

(3)(i) That the electronic products do not comply with all standards in effect under § 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), but are being imported for the purpose of research, investigations, studied, demonstrations, or training, (ii) that the products will not be introduced into commerce and when the use for which they were imported is completed they will be destroyed or exported under Customs supervision, and (iii) that an exemption for these products has been or will be requested from the National Center for Devices and Radiological Health, Food and Drug Administration, in accordance with § 360B(b) of the Act (42 U.S.C. 263j); or

(4) That the electronic products do not comply with all standards in effect under § 358 of the Act (42 U.S.C. 263f) and Chapter I, Subchapter J, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), but that a timely and adequate petition for permission to bring the products into compliance with applicable standards has been or will be filed with the Secretary of Health and Human Services in accordance with § 360 of the Public Health Service Act, as amended, and as implemented by 21 CFR 1005.21.

(c) *Notice of sampling.* When a sampling of a product offered for importation has been requested by the Secretary of Health and Human Services, as provided for in 21 CFR 1005.10, the district director of Customs having jurisdiction over the shipment from which the sample is procured shall give to its owner or importer of record prompt notice of delivery of, or intention to deliver, the sample. If the notice so requires, the owner or importer of record shall hold the shipment of which the sample is typical and not release the shipment until notice of the results of the tests of the sample from the Secretary of Health and Human Services stating the product fulfills the requirements of the Act.

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(4) of this section, the entry shall be accepted only if the owner or importer of record gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of a notification from the Secretary of Health and Human Services or his designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer if record is in compliance with the applicable standards. The bond shall be in an amount deemed appropriate by the district director. Within 180 days after the entry of such additional period as the district director may allow for good cause shown, the importer of record shall take any action necessary to insure delivery to the district director of the notification described in this paragraph. If the notification is not delivered to the district director for the port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the district director, for good cause shown, the importer of record shall deliver or cause to be delivered to the district director those electronic products which were released. In the event that any electronic products are not redelivered to Customs custody or exported under Customs supervision within the period allowed by the district director in the Notice of Redelivery (Customs Form 4647), liquidated damages shall be assessed in the full amount as a bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. **[TD 84-213.]**

(e) *Release without bond—special exemptions.* For certain electronic products the Director, National Center for Devices and Radiological Health, has granted special exemptions from the otherwise applicable standards under the Act. Such exempted products may be imported and released without bond if they meet all the criteria of the special exemption. If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the notification of compliance from the Secretary of Health and Human Services shall be deemed to have been satisfied.

(f) *Merchandise refused entry.* If electronic products are denied entry under any provisions of this section, the district director shall refuse to release the merchandise for entry into the U.S.

(g) *Disposition of merchandise refused entry into the U.S.; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (d) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the U.S. of an electronic product in violation of the Act (42 U.S.C. 263f, 263h). **[TD 83-235.]**

Switchblade Knives[1]

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows: **[TD 71-243.]**

(a) *Switchblade knife.* "Switchblade knife" means any imported knife which has—

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both; or

(2) A stiletto or other blade style which is designed for purposes that include a primary use as a weapon when, by

[1] T.D. 71-243, 36 FR 18859, Sept. 23, 1971.

insignificant preliminary preparation, as described in paragraph (b) of this section such stiletto or other weapon can be altered or converted so as to open automatically by operation of inertia, gravity, or both under the principle of the decision in the case of Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others (378 F. 2d 1014).

(b) *Insignificant preliminary preparation.* "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

(c) *Utilitarian use.* "Utilitarian use" includes but is not necessarily limited to use—

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle. **[TD 71-243.]**

(b) *Weapons with fixed blades.* Importations of certain articles having a fixed unexposed or exposed blade are not within the prohibition of the Act of August 12, 1958 (15 U.S.C. 1241–1244). However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.97 Importations contrary to law.

The importation of switchblade knives, except as permitted by § 4 of the Act of August 12, 1958 (15 U.S.C. 1244), are importations contrary to law and subject to forfeiture under 18 U.S.C. 545. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545) **[TD 71-243.]**

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by § 4 of the Act of August 12, 1958 (15 U.S.C. 1244), when— **[TD 71-243.]**

(a) Imported pursuant to contract with a branch of the Armed Forces of the U.S.;

(b) Imported by a branch of the Armed Forces of the U.S. or any member or employee thereof acting in the performance of his duty; or

(c) A switchblade knife having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.99 Procedures for permitted entry.

(a) *Declaration required.* The entry of switchblade knives, the importation of which is permitted under § 12.98 shall be accompanied by a declaration, in duplicate, of the importer or consignee stating the facts of the import transaction as follows: **[TD 71-243.]**

(1) *Importation pursuant to Armed Forces contract.* (i) The names of the contracting Armed Forces branch and its supplier;

(ii) The specific contract relied upon identified by its date, number, or other contract designation; and

(iii) A description of the kind or type of knife imported, the quantity entered, and the aggregate entered value of the importation.

(2) *Importation by a branch, member, or employee of the Armed Forces.* (i) The name of the Armed Forces branch by or for the account of which entry is made or the branch of the importing member or employee acting in performance of duty; and

(ii) The description, quantity, and aggregate entered value of the importation.

(3) *Importation by a one-armed person.* A statement that the knife has a blade not exceeding 3 inches in length and is possessed by and transported on the declarant's person solely for his necessary personal convenience, accommodation, and use as a one-armed individual.

(b) *Attachments to declaration.* Details for purposes of a declaration required under paragraph (a) of this section may be furnished by reference in the declaration to attachment of the original or copy of the contract or other documentation which contains the information.

(c) *Execution of declaration.* Declarations required by paragraph (a) of this section shall be executed as follows:

(1) *Contract supplier; Armed Forces branch; member or employee.* Declarations made under paragraph (a) or (b) of § 12.98 shall affirm that facts and data furnished are declared on knowledge, information, or belief of a signing officer, partner, or authorized representative of an importing contract supplier or of a commissioned officer, contracting officer, or employee authorized to represent an Armed Forces importing branch. The signature to a declaration shall appear over the declarant's printed or typewritten name, his title or rank, and the identity of the contract supplier or Armed Forces branch he represents or in which he has membership or employment.

(2) *One-armed person.* Declarations made under paragraph (c) of § 12.98, signed by the eligible person, shall be presented upon his arrival directly to an inspector or other Customs officer who shall visually confirm the facts declared. An eligible knife shall be released only to the declarant.

(d) *Verification of declared information.* The importer, consignee, or declarant of knives permitted entry under § 12.98 upon request shall furnish Customs additional documentary evidence from an Armed Forces branch or other

relevant source as Customs officers may require in order to—

(1) Verify declared statements;

(2) Resolve differences pertaining to quantity, description, value, or other discrepancy disclosed by the importation, entry, or related documentation;

(3) Establish the declarant's authority to act; or

(4) Authenticate a signature. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.100 Importations in good faith; common or contract carriage.

(a) *Exportation in lieu of seizure.* Upon a claim that the importer acted in good faith without knowledge of applicable laws and regulations, Customs officers may authorize detained inadmissible knives to be exported otherwise than in the mails, at no expense to the Government, under the procedures of §§ 18.25–18.27 of this chapter. **[TD 71-243.]**

(b) *Common or contract carriers.* In accordance with § 4 of the Act of August 12, 1958 (15 U.S.C. 1244(1)), excepted from the penalties of the Act are the shipping, transporting, or delivering for shipment in interstate commerce, in the ordinary course of business of common or contract carriage, of any switchblade knife. However, imported switchblade knives as defined in § 12.95(a) so shipped or transported to a port of entry or place of Customs examination are prohibited importations subject to §§ 12.95–12.103 and disposition as therein required, authorized, or permitted. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.101 Seizure of prohibited switchblade knives.

Importations contrary to law. Inadmissible importations which are not exported in accordance with § 12.100(a) shall be seized under § 545, title 18, United States Code. **[TD 71-243.]**

(b) *Notice of seizure.* Notice of Customs seizure shall be sent or given to the importer or consignee, which shall inform him of his right to file a petition under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized switchblade knives. (See Part 171 of this chapter.) (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545)

§ 12.102 Forfeiture.

If the importer or consignee fails to submit, within 60 days after being notified of his right to do so, a petition under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized importation, the seized prohibited knives shall be forfeited in accordance with applicable provisions of §§ 602–611, Tariff Act of 1930, as amended (19 U.S.C. 1602–1611), and the procedures of Part 162 of this chapter. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624; 18 U.S.C. 545) **[TDs 71-243, 78-99.]**

§ 12.103 Report to the U.S. Attorney.

Should circumstances and facts of the import transaction show evidence of deliberate violation of the act of August 12, 1958 (15 U.S.C. 1241–1244), so as to present a question of criminal liability, the evidence, accompanied by reports of investigative disclosures, findings, and recommendation, shall be transmitted to the U.S. Attorney for consideration of criminal prosecution. The district director of Customs shall hold the seized switchblade knives intact pending disposition of the case. (R.S. 251, sec. 593, 46 Stat. 751, sec. 624, 18 U.S.C. 545) **[TDs 71-243, 72-81, 82-145.]**

Cultural Property

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Party to the 1970 UNESCO Convention" means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such object—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation; or

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or nonindustrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such Article is specifically designated by any State Party for the purposes of Article 1.

Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis (Museum Services Act; Pub. L. 94-462; 20 U.S.C. 968). For the purposes of these regulations, the term "recognized museum" under the Cultural Property Implementation Act shall be synonymous with "museum".

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" or "U.S.", includes the customs territory of the U.S., the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties, and the date of entry into force for each State Party:

State Party	Dates of entry into force
Algeria	Sept. 24, 1974.
Argentina	Apr. 11, 1973.
Bangladesh	Mar. 9, 1988.
Bolivia	Jan. 4, 1977.
Brazil	May 16, 1973.
Bulgaria	Apr. 24, 1972
Burkina Faso	July 7, 1987.
Byelorussian SSR	July 28, 1988.
Cameroon	Aug. 24, 1972.
Canada	June 28, 1978.
Central African Republic	May 1, 1972.
Cuba	Apr. 30, 1980.
Cyprus	Jan. 19, 1980.
Czechoslovakia	May 14, 1977.
Democratic Kampuchea	Dec. 26, 1972.
Democratic People's Republic of Korea.	Aug. 13, 1983.
Dominican Republic	June 7, 1973.
Ecuador	Apr. 24, 1972.
Egypt	July 5, 1973.
El Salvador	May 20, 1978.
German Democratic Republic	Apr. 16, 1974.
Greece	Sept. 5, 1981.
Guatemala	Apr. 14, 1985.
Guinea	June 18, 1979.
Honduras	June 19, 1979.
Hungary	Jan. 23, 1979.
India	Apr. 24, 1977.
Iran	Apr. 27, 1975.
Iraq	May 12, 1973.
Italy	Jan. 2, 1979.
Jordan	June 15, 1974.
Kuwait	Sept. 22, 1972.
Mali	July 6, 1987.
Mauritania	July 27, 1977.
Mauritius	May 27, 1978.
Mexico	Jan 4, 1973.
Nepal	Sept. 23, 1976
Nicaragua	July 19, 1977.
Niger	Jan. 16, 1973.
Nigeria	Apr. 24, 1972.
Oman	Sept. 2, 1978.
Pakistan	July 30, 1981.
Panama	Nov. 13, 1973.
Peru	Jan. 24, 1980.
Poland	Apr. 30, 1974.
Portugal	Mar. 9, 1986.
Qatar	July 20, 1977.
Republic of Korea	May 14, 1983.
Saudi Arabia	Dec. 8, 1976.
Senegal	Mar. 9, 1985.
Socialist People's Libyan Arab Jamahiriya.	Apr. 9, 1973.
Spain	Apr. 10, 1986.
Sri Lanka	July 7, 1981.
Syrian Arab Republic	May 21, 1975.
Tunisia	June 10, 1975.
Turkey	July 21, 1981.
Ukrainian SSR	July 28, 1988.
Union of Soviet Socialist Republics	July 28, 1988.
United Republic of Tanzania	Nov. 2, 1977.
United States of America	Dec. 2, 1983.
Uruguay	Nov. 9, 1977.
Yugoslavia	Jan. 3, 1973.
Zaire	Dec. 23, 1974.
Zambia	Sept. 21, 1985.

(b) Additions to and deletions from the list of State Parties will be accomplished by ***Federal Register*** notice, from time to time, as the necessity arises. **[TD 88-59.]**

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry; if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the district director, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence is presented to such officer. The certificate, documentation, or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence required by § 12.104c. or such certificate, documentation, or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party:

(ii) If not returned to the State Party, be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws: No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and forefeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forefeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies

with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that: sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention on Cultural Property Implemenation Act will from time to time, as the necessity arises, be published in the ***Federal Register*** by means of a general notice.

§ 12.104h Exempt material and articles.

The provisions of this section shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the U.S. for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations.

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraphs (b) (1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S. for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the U.S., and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President. **[TDs 85-107, 86-52.]**

Pre-Columbian Monumental and Architectural Sculpture and Murals [1]

§ 12.105 Definitions.

For purposes of §§ 12.106 through 12.109:

(a) The term "pre-Columbian monumental or architectural sculpture or mural" means any stone carving or wall art listed in paragraph (b) of this section which is the product of a pre-Columbian Indian culture of Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela. **[TDs 73-119, 73-151, 73-165, 77-206, 82-145.]**

(b) The term "stone carving or wall art" includes:

(1) Such stone monuments as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;

(2) Such architectural structures as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;

(3) Architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs;

(4) Any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

(c) The term "country of origin," as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

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[1] 38 FR 10807, May 2, 1973.

§ 12.106 Importation prohibited.

Except as provided in § 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the U.S.) from its country of origin after June 1, 1973, may be imported into the U.S. **[TD 78-273.]**

§ 12.107 Importations permitted.

Pre-Columbian monumental or architectural sculpture or mural for which entry is sought into the Customs territory of the U.S. will be permitted entry if at the time of making entry:

(a) A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary, certifying that such exportation was not in violation of the laws of that country, is filed with the district director of Customs; or

(b) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural was exported from the country of origin on or before June 1, 1973; or

(c) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural is not an article listed in § 12.105. **[TD 82-145.]**

§ 12.108 Detention of articles; time in which to comply.

If the importer cannot produce the certificate or evidence required in § 12.107 at the time of making entry, the district director shall take the sculpture or mural into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is presented to such officer. The certificate or evidence must be presented within 90 days after the date on which the sculpture or mural is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

§ 12.109 Seizure and forfeiture.

(a) Whenever any pre-Columbian monumental or architectural sculpture or mural listed in § 12.105 is detained in accordance with § 12.108 and the importer states in writing that he will not attempt to secure the certificate or evidence required, or such certificate or evidence is not presented to the district director prior to the expiration of the time provided in § 12.108, the sculpture or mural shall be seized and summarily forfeited to the U.S. in accordance with Part 162 of this chapter.

(b) Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the U.S. shall in accordance with the provisions of Title II of Public Law 92-587, 19 U.S.C. 2093(b):

(1) First be offered for return to the country of origin, and shall be returned if that country presents a request in writing for the return of the article and agrees to bear all expenses incurred incident to such return; or

(2) If not returned to the country of origin, be disposed of in accordance with law, pursuant to the provisions of § 609, Tariff Act of 1930, as amended (19 U.S.C. 1609), and § 162.46 of this chapter. **[TD 82-145.]**

Pesticides and Devices

§ 12.110 Definitions.

Except as otherwise provided below, the terms used in §§ 12.111 through 12.117 shall have the meanings set forth for those terms in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), hereinafter referred to as "the Act." The term "Administrator" shall mean the Administrator of the Environmental Protection Agency. **[TD 75-194.]**

§ 12.111 Registration.

All imported pesticides are required to be registered under the provisions of § 3 of the Act, and under the regulations (40 CFR 162.10) promulgated thereunder by the Administrator before being permitted entry into the U.S. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular. **[TD 75-194.]**

§ 12.112 Notice of arrival of pesticides and devices.

(a) *General.* An importer desiring to import pesticides or devices into the U.S. shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the shipment in the U.S. The Administrator shall complete the Notice of Arrival, indicating the disposition to be made of the shipment of pesticides or devices upon its arrival in the U.S., and shall return the completed Notice of Arrival to the importer or his agent. **[TD 75-194.]**

(b) *Chemicals imported for use other than as pesticides.* Chemicals which can be used as pesticides but which are not imported for such use and are not shown on the Abbreviated List of Pesticides compiled by the Environmental Protection Agency, may be entered without the submission of the Notice of Arrival.

§ 12.113 Arrival of shipment.

(a) *Notice of arrival presented.* Upon the arrival of a shipment of pesticides or devices, the importer or his agent shall present to the district director of Customs at the port of entry the Notice of Arrival completed by the Administrator and indicating the Customs action to be taken with respect to the shipment. The district director shall compare entry documents for the shipment of pesticides or devices with the Notice of Arrival and notify the Administrator of any discrepancies. **[TD 75-194.]**

(b) *Notice of arrival not presented.* When a shipment of pesticides or devices arrives in the U.S. without the presentation by the importer or his agent of the Notice of Arrival completed by the Administrator, the shipment shall be detained by the district director at the importer's risk and expense until the completed Notice of Arrival is presented or until other disposition is ordered by the Administrator, but not to exceed a period of 30 days, or such extended period, not in excess of 30 additional days, as the district director for good cause may specially authorize. An application of the importer or his agent requesting an extension of the initial 30-day period shall be filed with the district director at the port of entry.

(c) *Disposition of pesticides or devices remaining under detention.* A shipment that remains detained or undisposed of due to failure of presentment of a completed Notice of Arrival or nonreceipt of an order of the Administrator as to its disposition shall be treated as a prohibited importation. The district director shall cause the destruction of any such shipment not exported by the consignee within 90 days

after the expiration of the detention period specified or authorized pursuant to § 12.113(b).

§ 12.114 Release or refusal of delivery.

If the completed Notice of Arrival directs the district director of Customs to release the shipment of pesticides or devices, the shipment shall be released to the consignee. If the completed Notice of Arrival directs the district director to refuse delivery of the shipment, the shipment shall be refused delivery and treated as a prohibited importation. The district director shall cause the destruction of any shipment refused delivery and not exported by the consignee within 90 days after notice of such refusal of delivery. **[TD 75–194.]**

§ 12.115 Release under bond.

If the completed Notice of Arrival so directs, a shipment of pesticides or devices shall be detained at the importer's expense by the district director of Customs pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the return of the merchandise to Customs custody. The bond shall be in an amount deemed appropriate by the district director. When a shipment of pesticides or devices is released to the consignee under bond, the shipment shall not be used or otherwise disposed of until the determination is made by the Administrator. **[TDs 75–194, 84–213.]**

§ 12.116 Samples.

Upon the request of the Administrator, either on the completed Notice of Arrival or otherwise, the district director of Customs shall deliver to the Administrator samples of the imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise. The district director shall notify the consignee, in writing, that the samples of imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise have been delivered to the Administrator. **[TD 75–194.]**

§ 12.117 Procedure after examination.

(a) *Merchandise complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in compliance with the Act, the Administrator shall notify the district director of Customs that the shipment may be released to the consignee. **[TD 75–194.]**

(b) *Merchandise not complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in violation of the Act, the consignee shall be notified promptly by the Administrator of the nature of the violation and be given a reasonable time, not to exceed 20 days, to submit written material or, at his option, to appear before the Administrator and introduce testimony, to show cause why the shipment should not be destroyed or refused entry. If, after consideration of all the evidence presented, it is still the opinion of the Administrator that the merchandise is in violation of the Act, the Administrator shall notify the district director of this opinion and the district director shall either (1) refuse delivery to the consignee, or (2) if the shipment has been released to the consignee under bond, demand redelivery of the shipment under the terms of the bond. If the merchandise is not redelivered within 30 days after the date of demand by the district director, the district director shall issue a demand for liquidated damages in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. The district director shall cause the destruction of any merchandise refused delivery to the consignee, or redelivered by the consignee pursuant to a demand therefor, and not exported by the consignee within 90 days after notice of such refusal of delivery or within 90 days after such redelivery, as applicable. **[TD 84–213.]**

Chemical Substances in Bulk and as Part of Mixtures and Articles

§ 12.118 Toxic Substances Control Act.

The importation into the customs territory of the U.S. of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of § 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency ("EPA").

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the U.S. of chemical substances in bulk and as part of mixtures under TSCA.

Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) "Article".

(1) "Article" means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which, have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2) below; except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) "Chemical substance in bulk form" means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

§ 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district director at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, may appear as a typed or stamped statement:

(1) On an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice.

(2) On the commercial invoice or an attachment to the invoice, in the event of release under a special permit for an immediate delivery, as provided for in § 142.21 of this chapter, or entry, as provided for in § 142.3 of this chapter.

(b) *Chemical substance or mixture as part of articles.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) of this section only if required by a rule or order under TSCA.

(c) *Facsimile signatures.* The certification statements in paragraph (a) may be signed by means of an authorized facsimile signature.

§ 12.122 Detention of certain shipments.

(a) The district director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the U.S. by a rule or order issued under § 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under § 7 of TSCA (15 U.S.C. 2606).

(b) The district director at the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the district director to detain the shipment.

(2) Whenever the district director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the district director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the district director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§ 12.127 and 127.28(i), unless previously released to the importer under bond as provided in § 12.123(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in Parts 12 and 127.

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a district director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the district director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The district director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the district director has reasonable grounds to believe that the shipment may be brought into compliance, or when the district director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the district director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the district director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the district director shall:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the district director shall assess liquidated damages in the full amount of the bond.

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the U.S. within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The district director, upon notification by the Administrator, may grant an extension of not

more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the U.S. within the required time period.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the district director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the district director. The importer shall include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent:

(b) A description of the chemical substances, mixtures, or articles exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air way bill number.

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the district director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or disposition as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise. **[TD 83-158.]**

Textiles and Textile Products

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is subject to the provisions of the International Arrangement Regarding Trade in Textiles (The Multi-Fiber Arrangement).

(1) Is in chief value of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof; or

(2) Contains 50 percent or more by weight of cotton or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement; or

(3) Contains 17 percent or more by weight of wool; or

(4) If in chief value of textile fibers or textile materials, contains a blend of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof, which fibers, in the aggregate amount to 50 percent or more by weight of all component fibers. **[TD 86-57, 89-1.]**

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c), a textile or textile product, subject to § 204, Agricultural Act of 1956, as amended, imported into the customs territory of the U.S., shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to § 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(c) *Applicability to U.S. articles sent abroad.* Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended. In order to have a single definition of the term "product of" and, therefore, a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, HTSUS, may not, upon its return to the U.S., be considered a product of the U.S.

(d) *Criteria for determining country of origin.* The criteria in paragraphs (d)(1) and (2) of this section shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity,

(ii) Fundamental character or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory or country, or insular possession of the U.S., compared to its value when imported into the U.S.

(e) *Manufacturing or processing operations.* (1) An article or material usually will be a product of a particular foreign territory or country, or insular possession of the U.S., when it has undergone prior to importation into the U.S. in that foreign territory or country, or insular possession any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (*e.g.* the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of a particular foreign territory or country, or insular possession of the U.S. by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (*e.g.* washing, drying, mending, etc.) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. Textiles or textile products subject to section 204 include that merchandise described in § 12.130(a). All importations of textiles and textile products not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s). **[TDs 86-57, 89-1.]**

(1) *Single foreign territory or country, or U.S. insular possession.* Textiles or textile products which are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or assembled in a single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. shall be identified in a declaration which is substantially in the following form:

Single Country Declaration

I, _____ (name), declare that the articles listed below and covered by the invoice or entry to which this declaration relates are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or were assembled in the single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. as identified below. I declare, that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A_____(country*)
B_____(country*)
C_____(country*)
D_____(country*)
etc.

Marks of identification, numbers	Description of article and quantity	Country of origin	Date of exportation

Date _____
Name _____
Signature _____
Title _____
Company _____
Address _____

* Country when used in this declaration includes territories and U.S. insular possessions. If the entry or invoice to which the declaration relates covers merchandise from more than one country each country will be identified in the declaration by the alphabetical designation appearing next to the named country. In the case of an assembly operation of U.S. components, both the country of assembly and the U.S. shall be reported (e.g. Haiti/U.S.) along with the date of exportation from the country of assembly.

(2) *More than one foreign territory or country, or U.S. insular possession.* Textiles and textiles products which were subjected to manufacturing or processing operations in, and/or incorporate materials orginating in more than one foreign territory or country, or an insular possession of the U.S. or were assembled in, and/or incorporate fabricated components which are the product of the U.S. and more

than one foreign territory, country or insular possession of the U.S., shall be identified in a declaration which is substantially in the following form:

Multiple Country Declaration

I, _____ (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates were exported from the country* identified below on the dates listed and were subjected to assembling, manufacturing or processing operations in, and/or incorporate materials originating in, the foreign territory or country* or countries*, or the U.S. or an insular possession of the U.S., identified below. I declare that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A_____(country*)
B_____(country*)
C_____(country*)
D_____(country*)
etc.

Marks of identification numbers	Description of article and quantity	Description of manufacturing and/or processing operations	Date and country of manufacture and/or processing		Materials		
			Country	Date of exportation	Description of material	Country of production	Date of exportation

Date_____
Name _____
Signature _____
Title _____
Company _____
Address _____

*Country or countries when used in this declaration includes territories and U.S. insular possessions. The country will be identified in the above declaration by the alphabetical designation appearing next to the named country.

(3) *Textiles and textile products not subject to § 204.* Textiles and textile products not subject to § 204, Agricultural Act of 1956, as amended, (see paragraph (a) of this section for products subject to § 204), shall be accompanied by the declaration set forth below:

Negative Declaration

I, _____ (name), declare that the articles described below and covered by the invoice or entry which this declaration relates are not subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

Marks of identification, numbers	Description of article and quantity	Country of origin

Date_____
Name _____
Signature _____
Title _____
Company _____
Address _____

(g) *Incomplete or insufficient information.* If the district director is unable to determine the country of origin of an article from the information set forth in the declaration, the declarant shall submit such additional information as requested. Release of the article from Customs custody will be denied until the determination is made based upon the information provided or the best information available. In this regard if incomplete or insufficient information is provided, the district director may consider the experience and costs of domestic industry in similar manufacturing or processing operations.

(h) *Shipments covered by an informal entry.* While a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22 of this chapter.

(i) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textiles or textile products, subject to § 204, Agricultural Act of 1956, as amended, shall be the date the vessel or carrier leaves the last port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes. **[TDs 84–171, 85–38.]**

§ 12.131 Entry of textiles and textile products.

Separate shipments of textiles and textile products, including samples, which originate from a country subject to visa or export license requirements for exports of textiles and textile products, arriving in the customs territory of the U.S. for one consignee on the same conveyance on the same day, the combined value of which is over $250, shall not be entered under the informal entry procedures set forth in subpart C, Part 143 or procedures set forth in § 141.52 of this chapter. District directors shall refuse separate informal entries and require a formal entry and visa or export license, as appropriate, for all such merchandise. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account. **[TDs 84–171, 85–38.]**

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

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Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen. Note 9, HTSUS, unless otherwise noted.

Source: 28 FR 14755, Dec. 31, 1963, unless otherwise noted.

General Provisions

§ 18.1 Carriers; application to bond.

(a)(1) Merchandise to be transported from one port to another in the U.S. in bond, except as provided for in paragraph (b) of this section, shall be delivered to a common carrier, contract carrier, freight forwarder, or private carrier bonded for that purpose, but such merchandise delivered to a common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or nonbonded carriers. For the purposes of this section, the term "common carrier" means a common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) shall be entitled to transport merchandise under this section. **[CCL 32/56; TDs 40578, 40631, 41760, 42783, 45303, 45690(6), 47505(1)(2), 48418, 48505, 49258, 51590, 52123, 53385, 53399, 55466, 55734, 55801, 56107, 69–14, 69–19, 70–121, 71–70, 73–140.]**

(2) Merchandise to be transported from one port to another in the U.S. under cover of a TIR carnet (see Part 114 of this chapter), except merchandise not otherwise subject to Customs control, as provided in §§ 18.41 through 18.45, shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The TIR carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(c)(3) of this chapter. **[TDs 71–70, 71–263.]**

(3) Merchandise to be transported from one port to another in the U.S. under cover of an A.T.A. carnet (see Part 114 of this chapter) shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The A.T.A. carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter. **[TD 82–116.]**

(b) Pursuant to Public Resolution 108, of June 19, 1936 (19 U.S.C. 1551, 1551a), and subject to compliance with all other applicable provisions of this part, the appropriate area director, upon the request of the party in interest, may permit merchandise entered and examined for Customs purposes to be transported in bond between the ports named in the resolution by bonded cartmen or lightermen duly qualified in accordance with the provisions of Part 112 of this chapter, if the appropriate area director is satisfied that the transportation of such merchandise in this manner will not endanger the revenue. **[TDs 78–99, 82–145, 89–1.]**

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier.* Except as set forth in paragraphs (a)(2) and (a)(3) of this section, within 5 working days after presentation of an entry for merchandise to be transported in bond, the forwarding carrier shall take receipt of the merchandise if any lay order period and extension thereof have expired and no other entry is filed. If the forwarding carrier fails to take receipt of the merchandise

within the prescribed period, the transportation entry shall be canceled and the merchandise shall be treated as unclaimed as of the date of original arrival.

(2) When merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under supervision of a Customs officer unless—

(i) The transporting conveyance is not to be sealed with Customs seals, or

(ii) The lading inspector accepts the check of the carrier as to the merchandise laden. The carrier's receipt shall be given immediately to the lading inspector on the Customs in-bond document (the appropriate Customs Form 7512, or the carnet) covering the merchandise. In the case of a carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation.

Name of Carrier (or Exporter) _____

Attorney-in-fact or Agent of Carrier (or Exporter) _____

_____

Date _____

(3) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(4) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter. **[TDs 37341, 41283, 41284, 41332, 48505, 53893, 53989, 71–70, 82–116, 82–204, 84–212, 86–16, 87–75.]**

(b) A Customs in bond document containing a description of the merchandise, and Customs control card (Customs Form 7512–C), shall be prepared by the carrier or any of the parties named in § 18.11(b), whenever merchandise is being transported in bond. The Customs in-bond document thus prepared shall then be signed by the carrier or any of the parties named in § 18.11(b). All copies of the in-bond document shall be signed by the importing carrier or his agent and the in-bond carrier or his agent to indicate the quantity delivered for transportation in bond. When there is no discrepancy between the quantity manifested by the importing carrier and the quantity delivered to the in-bond carrier, the district director of Customs may authorize waiving the signature of the parties in interest as to delivered quantities. Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter. Except as prescribed in Subpart D of Part 123 of this chapter, relating to merchandise in transit through the U.S. between ports in contiguous foreign territory, a separate set shall be prepared for each entry and, if the consignment is contained in more than one conveyance, a separate set shall be prepared for each conveyance. **[TDs 45804, 70–121, 71–22, 71–70, 84–212.]**

(c)(1) After the merchandise has been laden and the in-bond carrier or his agent has receipted the in-bond document, Customs Form 7512 (in duplicate), together with either the related Customs Form 7512–C (destination) or the carnet (which cannot be used in conjunction with Customs Form 7512–C) shall be delivered as a manifest to the conductor, master, or person in charge to accompany the merchandise to its port of destination or exportation. If more than one conveyance is used to transport the merchandise, the Customs Form 7512–C (destination) shall accompany the first conveyance, and two copies of Customs Form 7512 shall accompany each conveyance as a manifest of the merchandise transported by that conveyance. A TIR carnet (see § 18.3(b)) shall not be used if more than one conveyance is required.

(2) Except transit air cargo provided for in § 122.18 of this chapter, bonded merchandise destined to a final port of destination in the U.S., or for export from the U.S., shall be delivered to Customs at the port of destination or exportation within 30 days after the date of receipt by the forwarding carrier at the port of origin, if transported on land. If the merchandise is transported on board a vessel engaged in the U.S. coastwise trade, delivery to Customs at the port of destination or exportation shall be within 60 days after the date of receipt by the forwarding carrier at the port of origin. Failure to deliver the merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8). **[TDs 37341, 53336, 53531, 53792, 54429, 71–70, 82–116, 84–212, 87–75, 88–12.]**

(d) Promptly, but no more than 2 working days after the arrival of any portion of the in-bond shipment at the port destination, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512–C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8). **[TDs 69–19, 71–70, 84–212.]**

§ 18.3 Transshipment; transfer by bonded cartmen.

(a) When bonded merchandise in one conveyance is to be transshipped under Customs supervision to another single conveyance while en route to the port of destination or exportation, the in-bond document which accompanied the merchandise shall be presented to the district director of Customs at the place of transshipment for execution of a certificate of transfer thereon. The in-bond document shall be returned to the carrier to accompany the merchandise to the port of destination or exportation. Except as provided in paragraph (c) of this section, merchandise covered by a TIR carnet shall not be transshipped if the transshipment involves the unlading of the merchandise from a container or road vehicle. **[TDs 41283, 47505(1), 48505, 51035, 51215, 54880, 71–70, 89–1.]**

(b) When bonded merchandise, other than merchandise covered by a TIR carnet, is to be transshipped to more than one conveyance, the carrier or any of the parties named in § 18.11(b) shall prepare for each such conveyance two additional copies of the Customs Form 7512 which accompanied the merchandise to the place of transshipment. The

Customs Form 7512 and Customs Form 7512-C (destination) which accompanied the shipment to the place of transshipment shall be presented to the district director there. The Customs officer supervising the transshipment shall execute a certificate of transfer on all copies of the Customs Form 7512. The original copies of the Customs Form 7512 and the related Customs Form 7512-C (destination) shall be delivered to the conductor, master, or person in charge of the first conveyance. Two additional copies of the Customs Form 7512 shall be delivered to the person in charge of each additional conveyance in which the merchandise is forwarded for delivery to the district director at the port of destination or exportation. **[TDs 46188, 54880, 71-70, 84-212.]**

(c) Merchandise covered by a TIR carnet may be transshipped in a case involving the unlading of the merchandise from a container or road vehicle only if the transshipment is necessitated by casualty en route. In the event of transshipment, a TIR approved container or road vehicle shall be used if available. If the transshipment takes place under Customs supervision, the Customs officer shall execute a certificate of transfer on the appropriate TIR carnet voucher. **[TDs 32086, 43576, 47639(6), 71-70.]**

(d) If it becomes necessary at any point in transit to remove the Customs seals from a conveyance or container containing bonded merchandise for the purpose of transferring its contents to another conveyance or container, or to gain access to the shipment because of casualty or for other good reason, and it cannot be done under Customs supervision because of the element of time involved or because there is no Customs officer stationed at such point, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, seal the conveyance or container in which the shipment goes forward, and make appropriate notation of his action on the conductor's or master's copy of the manifest, or the outside back cover of the TIR carnet, including the date, serial numbers of the new seals applied, and the reason therefor. This authorization shall not apply in any case not involving a real emergency. **[TDs 47505(2), 51035, 71-70.]**

(e) All transfers to or from the conveyance or warehouse of merchandise undergoing transportation in bond shall be made under the provisions of Part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet is liable for the safekeeping and delivery of the merchandise while it is being transferred. (Secs. 551, 565, 46 Stat. 742, as amended, 747; 19 U.S.C. 1551, 1565.) **[TDs 71-70, 82-204, 84-213.]**

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Except as provided in § 123.33 of this chapter, conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed under Customs supervision with high security red in-bond Customs seals, or if incapable of being so sealed, with red in-bond Customs seals. When the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the U.S. for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealings may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the Customs laws and regulations. **[TDs 40852, 47071(10), 48505, 52039, 53057, 70-121, 71-70, 77-30, 77-160.]**

(2) The district director of Customs shall cause a Customs seal to be affixed to a container or road vehicle which is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a valid customs seal (domestic or foreign). The district director shall likewise cause a Customs seal or label to be affixed to heavy or bulky goods being so transported. If, however, he has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise which is to be transported, he shall cause a Customs seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree. **[TD 71-70.]**

(b) Ports at which the facilities are insufficient to maintain continuous customs supervision over vessels arriving with bonded cargo while the bonded merchandise is not under Customs seals shall permit the vessels to proceed to destination without further sealing and notation to this effect shall be made on the manifest. **[C.I.E. 1440/58; TD 47071(10).]**

(c)(1) Merchandise not under bond may be transported in sealed conveyances or compartments containing bonded goods when destined for the same place or places beyond, but not when intended for intermediate places. **[TD 71-70.]**

(2) Merchandise moving under cover of a carnet may not be consolidated with other merchandise. **[TDs 71-70, 82-116.]**

(d) The seals to be used in sealing conveyances, compartments, or packages are prescribed by the Department and may be obtained in accordance with § 24.13 of this chapter. **[TD 48235.]**

(e) Except as otherwise provided for in this paragraph, packages shipped in bond or by a carrier permitted to transport articles under the last sentence of § 553 of the tariff act, as amended, shall be corded and sealed or, in lieu thereof, the carrier shall furnish and attach to each such package a warning label on bright red paper, not less than 5 by 8 inches in size, containing the following legend in black or white lettering of a conspicuous size: **[TDs 51652, 56355, 68-74, 76-43.]**

U.S. Customs

This package is under bond and must be delivered intact to the Customs officer in charge at the port of destination or to such other place as authorized by Customs.

Warning. Two years' imprisonment, $5,000 fine, or both, is the penalty for unlawful removal of this package or any of its contents.

Transportation Entry No. _____; From _____ To _____; This package to be delivered to Customs at _____ (If other than port of destination)

A carrier at its option may omit the last three lines of the above legend from the warning label but if not omitted the

information called for must be filled in. If the size of the package renders the use of a 5 × 8 inch warning label impracticable because of lack of space, a 3 × 5 inch label may be used. A high visibility, pressure-sensitive warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3 inches in size, may be used on any size package. Such cording and sealing or labeling of the packages so shipped is not required either when the packages are transported in a conveyance or compartment sealed with Customs seals, or when the sealing of the conveyance or compartment in which the packages are transported is waived under paragraph (a) or (b) of this section. When the packages are shipped in a railroad car the sealing of which is practicable but which is not sealed because merchandise not being transported in bond is or may be carried in the same car, the packages being transported in bond shall be corded and sealed or labeled.

(f) The warning label, when used, shall be pasted securely on the package under Customs supervision as close as practicable to the mark or number on the package. Additional labels may be required by the district director in such places on the package as he shall specify in any case where he is of the opinion that one is not adequate. **[TD 53336.]**

(g) When, in the case of crates and similar packages, it is impossible to attach the warning labels by pasting, bright red shipping tags of convenient size, large enough to be conspicuous and containing the same legend as the labels, shall be used in lieu of labels. Such tags shall be wired or otherwise securely fastened to the packages in such manner as not to injure the merchandise.

(h) Bonded carriers shall furnish and securely attach to the side doors of cars, to the doors of compartments, and on vehicles carrying bonded merchandise which are secured with Customs seals, bright red cards, 8 by 10¼ inches in size, which shall be attached near such seals and on which shall be printed in large, clear, black letters the following: **[TDs 7601, 25775, 18 USC 409; 19 USC 1598.]**

U.S. Customs. Two years' imprisonment, or $5,000 fine, or both, is the penalty for the unlawful removal of U.S. Customs seals on this car, vehicle, or compartment. U.S. Customs officers only are authorized to break these seals.

Car or vessel _____
Number or name _____
From _____
To _____

Notice: The merchandise in this car, vehicle, or compartment shall be delivered to the chief officer of the customs at _____
(Sec. 552, 553, 46 Stat. 742, as amended; 19 U.S.C. 1552, 1553) **[TD 56355.]**

(i) *Removal of seals.* Except as provided in § 18.3(d) and § 19.6(e) of this chapter, seals affixed under this § shall be removed only under Customs supervision. **[TD 82-204.]**

§ 18.4a Containers or road vehicles accepted for transport under customs seal; requirements.

(a)(1) Containers covered by the Customs Convention on Containers shall be accepted for transport under Customs seal (see § 18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and (ii) constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority. **[TD 71-70.]**

(2) Containers carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal (see § 18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (ii) constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and (iii) if the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(b) Road vehicles carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal if (1) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (2) constructed and equipped as outlined in Annex 3 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and (3) if

(c) The district director of Customs may refuse to accept for transport under Customs seal a container or road vehicle bearing evidence of approval if, in his opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(d) Containers or road vehicles which are not approved under the provisions of a Customs Convention may be accepted for transport under Customs seal only if the district director at the port of origin is satisfied that (1) the container or road vehicle can be effectively sealed and (2) no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet. (77A Stat. 14, sec. 14, 67 Stat. 516, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 1202 (Gen. Hdnote. 11), 1322, 1623, 1624)

§ 18.5 Diversion.

(a) Merchandise forwarded under any class of transportation entry may be diverted to any port other than the port named in the entry at the option of the consignee or agent. Except as provided for in paragraphs (c), (d), (e), and (f), of this section, prior application or approval of such diversion is not required. **[TDs 17688, 37340, 37460, 38287 (Q. 34), 48505, 53792, 71-70, 84-207, 85-38.]**

(b) The district director of Customs at the port to which merchandise is diverted may permit merchandise in transit under bond under any class of transportation entry to be entered at his port for consumption, warehouse, exportation, further transportation in bond, or under any provisions of the tariff laws. **[TDs 40351, 46032, 50982, 71-70.]**

(c) When merchandise which has been delivered to the district director at the port of original destination or port of diversion under any class of transportation entry is to be forwarded to another port or returned to the port of origin, a new transportation entry shall be required. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry. **[TDs 39514, 53792, 71-70, 82-116.]**

(d) If it is desired to split a shipment at a port of destination and to enter a portion for consumption or warehouse and forward the balance in bond, or to divert the entire shipment or a part thereof to more than one port, the district director at the port where diversion takes place shall complete the original transaction and shall require the filing of a new transportation entry or entries for the portion or portions forwarded. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted. **[TDs 53792, 71-70, 82-116.]**

(e) The diversion of shipments in bond which are subject on importation to restriction or prohibition under quarantines and regulations of the Agricultural Research Service of the Department of Agriculture shall be allowed only upon written permission or under regulations issued by the agency concerned. (Secs. 551-553, 46 Stat. 742, as amended; 19 U.S.C. 1551-1553) **[TDs 49600, 71-70.]**

(f) The diversion of in-bond shipments, which contain textiles or textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), during the in-bond movement shall be allowed only upon the prior written permission of the district director at the port of origin. **[TDs 84-207, 85-38.]**

§ 18.6 Short shipments; shortages; entry and allowance.

(a) When there has been a short shipment and the short-shipped packages are subsequently received, they may be forwarded only under a new transportation entry referenced to the original entry. **[TDs 32280, 48505, 71-70.]**

(b) When there is a shortage of one or more packages, or nondelivery of an entire shipment, or delivery to unauthorized locations, or delivery to the consignee without the permission of Customs, the district director may demand return of the merchandise to Customs custody. The demand shall be made no later than 30 days after the shortage, delivery, or nondelivery is discovered by Customs. The demand for the return of the merchandise to Customs custody shall be made on the bonded carrier, cartman, or lighterman identified on the Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, Customs Form 7512, the Transit Air Cargo Manifest (TACM), or other appropriate document. The demand for the return of the merchandise shall be made on Customs Form 4647, Notice of Redelivery, or other appropriate form or by letter. A copy of the demand with the date of mailing or delivery noted thereon, shall be retained by the district director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier. **[TDs 71-22, 71-70, 84-213.]**

(c) If the merchandise cannot be recovered intact, as specified above, entry shall be accepted in accordance with § 141.4 of this chapter for the full manifested quantity unless a lesser amount is otherwise permitted in accordance with Subpart A of Part 158. Except as provided in paragraph (d) of this section, if the merchandise is not returned to Customs custody within 30 days of the date of mailing or date of delivery of the demand for redelivery, there shall be sent to the initial bonded carrier a demand for liquidated damages on Customs Form 5955-A, in the case of nondelivery of an entire shipment or on Customs Form 5931, in the case of a partial shortage. **[TDs 37498, 71-22, 71-70, 82-158, 84-213.]**

(d) If merchandise covered by a carnet cannot be recovered intact, as specified in paragraph (b) of this section, entry shall not be accepted; there shall be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in § 18.8(e); and, if appropriate, there shall also be sent to the initial bonded carrier a demand for any excess, as provided in § 114.22(c)(3) of this chapter. Demands shall be made on the forms specified in paragraph (c) of this section. **[19 USC 1558. TDs 22465, 47569, 71-70, 82-116, 85-180.]**

(e) An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, shall be made in the liquidation of the entry. **[TDs 51275, 70-121, 71-70.]**

(f) In the case of shipments arriving in the U.S. by rail or seatrain which are forwarded under Customs in-bond seals under the provisions of Subpart D of Part 123 of this chapter, and § 18.11, or § 18.20, a notation shall be made by the carrier or shipper on the in-bond manifest, Customs Form 7512, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country, which shall be named. (Secs. 551, 552, 553, 46 Stat. 742, as amended; 19 U.S.C. 1551, 1552, 1553) **[TD 71-70.]**

§ 18.7 Lading for exportation, verification of.

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8). **[TDs 53893, 71-70, 84-212.]**

(b) The district director shall require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation as is reasonably necessary to satisfy him that the merchandise has been laden on the exporting conveyance.

(c) Whenever the circumstances warrant, and occasionally in any event, district directors shall request the Office of Investigations to check export entries and withdrawals against the records of the exporting carriers. Such check or verification shall include an examination of the carrier's records of claims and settlement of export freight charges and any other records which may relate to the transaction. The exporting carrier shall maintain these records for 5 years from the date of exportation of the merchandise. (Secs. 553, 557, 46 Stat. 742, as amended, 744 as amended, sec. 646, 67 Stat. 520; 19 U.S.C. 1553, 1557, 1646a) **[TD 79-159.]**

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced. **[CCL 26/56. TDs 48505, 49209 (4), 71-70, 84-212.]**

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery as provided in such bond. **[TD 85-191.]**

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties or other taxes accruing to the U.S. on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery. **[TDs 53399, 82-13.]**

(d) In any case in which liquidated damages imposed in accordance with this § do not aggregate over $50,000 and the district director is satisfied by evidence submitted to him with an application for relief from the payment thereof filed as provided in Part 172 of this chapter that any shortage, irregular delivery, nondelivery, or any failure to obtain Customs supervision was without any intent to evade any law or regulation, the district director may cancel such claim upon the payment of any lesser amount or without the payment of any amount, as he may deem appropriate under the law and in view of the circumstances. **[TDs 53919, 54346, 70-249, 71-70, 73-308.]**

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be in accordance with this section. If a TIR carnet has not been discharged, or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the abovementioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable. **[TD 71-70, 85-180, 85-191.]**

(2) Within 3 months from the date demand for payment is made by the district director as provided by § 18.6(d), the guaranteeing association shall pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see § 114.22(d) of this chapter), the carrier shall pay the excess. The amount paid shall be refunded if, within a period of 1 year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of Customs that no irregularity occurred. The district director may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (d) of this section.

(3) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, and taxes accruing to the U.S. and any other charges imposed as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by an A.T.A. carnet. However, the liability of the guaranteeing association shall not exceed the amount of the import duties by more than 10 percent. If an A.T.A. carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharged of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment shall be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association shall be allowed a period of six months from the date of any claim by the district director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. carnet. If such proof is not furnished within the time specified, the guaranteeing association shall either deposit or provisionally pay the sums. The deposit or payment shall become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid. **[TDs 82-116, 89-1.]**

(Sec. 551, 623, 46 Stat. 742, as amended, 759, as amended; 19 U.S.C. 1551, 1623.)

§ 18.9 Examination by inspectors of trunk line associations or agents of the Interstate Commerce Commission.

(a) Upon presentation of proper credentials showing the applicant to be a representative of the Trunk Line Association, the Interstate Commerce Commission, the Joint Rate Inspection Bureau of Chicago, or the Southern Weighing and Inspection Bureau of Atlanta, inspectors of Customs in charge shall permit such applicant to open and examine packages containing in-bond merchandise described in the manifest in general terms for the purpose of ascertaining whether the merchandise is properly classified under the interstate commerce laws. **[TDs 33465, 33723, 40493.]**

(b) The opening and examination of such packages shall be without expense to the Customs Service or the owner of the goods and shall be done in the presence of a Customs officer. The contents of the cases shall not be removed or disturbed further than is necessary to ascertain the character thereof. The Customs officer shall require the packages to be securely closed, and shall note on the manifest the packages so inspected, the date, and by whom inspected. (Sec. 551, 46 Stat. 742, as amended; 19 U.S.C. 1551.)

§ 18.10 Kinds of entry.

(a) The following entries and withdrawals may be made for merchandise to be transported in bond: **[TDs 38539, 48505, 53399.]**

(1) Entry for immediate transportation without appraisement.

(2) Warehouse or rewarehouse withdrawal for transportation.

(3) Warehouse or rewarehouse withdrawal for exportation or for transportation and exportation.

(4) Entry for transportation and exportation.

(5) Entry for exportation.

(b) The copy of each entry or withdrawal made in any of the classes named in paragraph (a) of this § which is retained in the office of the forwarding district director shall be signed by the party making the entry or withdrawal. In the case of shipments to the Virgin Islands (U.S.) under paragraph (a), (3), (4), or (5) of this section, one additional copy of the entry or withdrawal on Customs Form 7512 shall be filed and shall be mailed by the receiving district director to the district director, Charlotte Amalie, St. Thomas, Virgin Island (U.S.). Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination (Secs. 552, 553, 557, 46 Stat. 742, as amended, 744, as amended; 19 U.S.C. 1552, 1553, 1557.) **[TDs 53792, 54429, 89–1.]**

§ 18.10a Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in bond from the port of unlading to the destination shown on the importing carrier's manifest (manifested port) when authorized by the district director having custody of the merchandise. For this purpose, Custom's Form 7512 prepared in quadruplicate shall be used as a special manifest.

(b) *Manifest procedures.* (1) Written application shall be made to the district director where the merchandise is being held for permission to return it as a bonded shipment under a special manifest to the manifested port, including to the port of diversion (see § 4.33 of this chapter), when different from the original manifested port.

(2) The application and accompanying completed Customs Form 7512 shall identify the prematurely discharged or overcarried merchandise on the inward manifest of the importing carrier, and also identify the date and entry number of any entry made at the manifested port covering the merchandise to be returned, if known. If the district director is satisfied that the merchandise will be delivered to Customs custody at the manifest port before expiration of 90 days from the date of the entry identified, or 90 days from the date of the importing carrier's arrival at the manifested port when no entry is identified, the district director may approve the shipment under a special manifest. **[TDs 54544, 83–218.]**

Immediate Transportation Without Appraisement

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

(a) Entry for immediate transportation without appraisement may be made under § 552, Tariff Act of 1930, (1) for any merchandise, except explosives and prohibited merchandise, upon its arrival at a port of entry, or (2) for merchandise in general-order warehouse at any time within 1 year from the date of importation. **[TDs 10850, 21219, 53888, 71–70, 89–1.]**

(b) Entry for immediate transportation without appraisement may be made by (1) the carrier bringing the merchandise to the port of arrival, (2) the carrier who is to accept the merchandise under its bond or a carnet for transportation to the port of destination, or (3) any person shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to the district director of Customs, to have a sufficient interest in the merchandise for that purpose. **[CIE 376/59. TDs 20111, 54235, 71–70, 82–116.]**

(c) Before a shipment covered by an entry for immediate transportation, including a carnet, or a manifest of baggage shipped in bond (other than baggage to be forwarded in bond to a Customs station—see § 18.13(a)), shall be allowed to be transported directly to a place of deposit outside a port of entry for examination and release as contemplated by § 484(f), Tariff Act of 1930, as amended, the consent of the district director of customs for the port of entry designated in the transportation entry or baggage manifest (or in the event of diversion under § 18.5, for the port of destination of the merchandise or baggage) must first be secured. Before consent may be given, the importer must furnish such district director with a stipulation that, promptly upon the arrival of any part of the merchandise or baggage at the place of deposit, he will file an entry for the shipment at the port of entry designated in the transportation entry or baggage manifest (or in the event of diversion under § 18.5, at the port of destination of the merchandise or baggage) and will comply with the provisions of § 151.9 of this chapter. **[CCL 11/54. TDs 53336, 54388, 71–70, 73–175, 82–116, 89–1.]**

(d) Carload shipments of livestock shall not be entered for immediate transportation without appraisement unless they will arrive at destination before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route be such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under Customs supervision. **[TDs 43577, 43578.]**

(e) Entries for immediate transportation without appraisement covering merchandise subject to detention or supervision by any Federal agency shall contain a sufficient description of the merchandise to enable the representative of the agency concerned to determine the contents of the shipment. Such merchandise covered by quarantines and regulations administered by the Bureau of Entomology and Plant Quarantine shall be forwarded under such entries only upon written permission of or under regulations issued by that Bureau. Entries for immediate transportation without appraisement covering textiles and textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), shall be described in such detail as to enable the district director to estimate the duties and taxes, if any, due.

The district director may require evidence to satisfy him of the approximate correctness of the value and quantity stated in the entry (e.g. Detailed quantity description (e.g., 14 cartons, 2 dozen per carton); Detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); Net weight of the textiles or textile products (including immediate packing but excluding pallet); Total value of the textiles or textile products; Manufacturer or supplier; Country of origin; Name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned; Harmonized code tariff number (when available)). **[TDs 38523, 49600, 84–171, 84–207, 85–38, 89–1.]**

(f) One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation without appraisement, provided all the merchandise covered by the invoice is entered simultaneously and any carnet which may cover such merchandise is discharged as to that merchandise. **[TDs 71–70, 82–116.]**

(g) Several importations may be consolidated in one immediate transportation without appraisement entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a carnet may not be consolidated with other merchandise. **[TDs 71–70, 82–116.]**

(h) Either Customs Form 7512 or a carnet shall be used as a combined transportation entry, invoice, and manifest. If Customs Form 7512 is used, a minimum of three copies shall be required at the port of origin. The district director, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to the bonded carrier. In lieu of additional copies of the Goods Manifest, the district director may accept copies of a bill of lading covering the merchandise. The merchandise shall be described in such detail as to enable the district director to estimate the duties and taxes, if any, due. The district director may require evidence to satisfy him of the approximate correctness of the value or quantity stated in the entry. If a TIR carnet is used, and the duties and taxes estimated to be due exceed the maximum liability of the guaranteeing association under the carnet, the provisions of § 114.22(d) of this chapter shall apply. **[CCL 48/57. TDs 37341, 39345, 48505, 50648, 51774, 53792, 53893, 54429, 55801, 71–70, 82–116.]**

(i) The value stated on the entry at the port of first arrival is not binding on the ultimate consignee making entry at the port of destination and does not relieve the importer of the obligation to show the correct value on entry. (Secs. 484, 552, 46 Stat. 722, as amended, 742; 19 U.S.C. 1484, 1552) **[TD 71–70.]**

§ 18.12 Entry at port of destination.

(a) Merchandise received under an immediate transportation without appraisement entry may be entered for transportation and exportation or for immediate transportation, or under any other form of entry, and shall be subject to all the conditions pertaining to merchandise entered at a port of first arrival if not more than 1 year has elapsed from the date of original importation. If more than 1 year has elapsed, only an entry for consumption shall be accepted. Such entry shall show the name of the port of first arrival, the transporting carrier, and the number of the immediate transportation entry. (See § 127.2 of this chapter.) **[TDs 39514, 48505, 53399, 74–114.]**

(b) The right to make entry at the port of destination shall be determined in accordance with the provisions of § 141.11 of this chapter. **[TD 73–175.]**

(c) When a portion of a shipment is entered at the port of first arrival and the remainder is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter. **[TDs 12157, 38289, 73–175.]**

(d) All importations forwarded under immediate transportation without appraisement entries (including carnets) shall be held by the bonded carrier at the port of destination until released by the district director of customs. **[TDs 71–70, 82–116.]**

(e) All merchandise included in an immediate transportation without appraisement entry (including carnets) not entered within 5 days, exclusive of Sundays and holidays, after delivery of the manifest to the district director at the port of destination shall be treated as unclaimed unless the district director, with the concurrence of the carrier, authorizes in writing a longer time. (Secs. 484, 552, 46 Stat. 722, as amended, 742; 19 U.S.C. 1484, 1552.) **[TDs 30592, 39345, 53336, 53960, 71–70, 82–116.]**

Shipment of Baggage in Bond

§ 18.13 Procedure; manifest.

(a) Baggage may be forwarded in bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter, at the request of the passenger, the transportation company, or the agent of either, with the use of a baggage manifest described in paragraph (b) of this § without examination or assessment of duty at the port or station of first arrival. For this purpose, the carrier shall furnish cards of bright red cardboard not less than 2 1/2 by 4 inches in size with the following printed text, for attachment (by wire or cord) to the baggage: **[TDs 38535, 48505, 53399, 53960, 53970, 54388, 70–121, 77–241.]**

U.S. Customs

Check No. _____
Baggage in bond: _____
Carrier _____
From _____

To District Director Of Customs

At (destination) _____

This baggage must be delivered by carrier to the district director at destination. Failure to do so renders the carrier liable to a fine.

(b) A Customs manifest for baggage shipped in bond, Customs Form 7512, shall be prepared in triplicate for each shipment. The related Customs Form 7512–C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival. **[TDs 31791, 41639, 48505, 53792, 54388, 71–70, 84–212, 87–75.]**

(c) Baggage arriving in bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under Customs supervision, without examination and without being placed in bond, on a vessel proceeding to the opposite coast, provided the vessel will

proceed to the opposite coast without stopping at any other port on the first coast. (Secs. 498(a), 552, 46 Stat. 28, as amended, 742; 19 U.S.C. 1498(a), 1552) **[TD 47882.]**

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the U.S. from one foreign country to another may be shipped over a bonded route for exportation. Such baggage shall be shipped under the regulations prescribed in § 18.13, except that the card or paster shall be printed on yellow paper and shall read "Baggage in bond for export." See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the U.S. between points in Canada or Mexico. (Secs. 498, 553, 46 Stat. 728, as amended, 742, as amended; 19 U.S.C. 1498, 1553) **[TDs 38535, 48505, 52039, 53970, 70–121.]**

Merchandise in Transit Through the U.S. to Foreign Countries

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation, except as provided for in subparts D, E, F, and G of Part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), a carnet or four copies of Customs Form 7512 shall be required. The district director of Customs, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to, the bonded carrier. In lieu of additional copies of a Goods Manifest, the district director may accept copies of a bill of lading covering the merchandise. **[CCL 48/57. CIEs 776/57; 376/59. TDs 22250, 24890, 30876, 32147, 34531, 37340, 45804, 48505, 50648, 51035, 53792, 53893, 54429, 56460, 70–121, 71–70, 82–116, 84–212, 89–1.]**

(b) Except in respect to merchandise covered by a carnet (see § 18.1(a)(2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the district director may permit entry in accordance with the procedure outlined in paragraph (a) of this section if he is satisfied that the revenue will not be endangered. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties shall be required when the district director deems such action necessary. (See § 113.55 of this chapter for cancellation of export bonds.) **[SCL 12/56. TDs 49658, 52595(1), 71–70, 74–227, 82–116, 84–213, 89–1.]**

(c) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1–18.8. If the merchandise is not forwarded within 30 days from the date the entry is filed, the entry shall be canceled and the merchandise treated as unclaimed as of the date of original arrival. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553) **[TD 51035.]**

§ 18.21 Restricted and prohibited merchandise.

(a) Merchandise subject upon importation to examination, disinfection, or further treatment under quarantines and Quarantine Division, Agricultural Research Service, Department of Agriculture, shall be released for transportation or exportation only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.) **[TDs 48505, 49600, 54292, 55039.]**

(b) Narcotics and other articles prohibited admission into the commerce of the U.S. shall not be entered for transportation and exportation and any such merchandise offered for entry for that purpose shall be seized, except that exportation or transportation and exportation may be permitted upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

(c) Articles in transit manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the collector that they are non-narcotic, shall be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the district director whether or not they are of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating whether narcotic or not, may be accepted by the district director to establish the character of such a shipment. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553.) **[TD 39308.]**

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency. **[TD 84–77.]**

§ 18.22 Procedure at port of exit.

(a) If transfer is necessary, the procedure shall be as prescribed in § 18.3(d). **[TDs 37340, 48505.]**

(b) Upon the arrival at the port of exit of express shipments of articles shown by the manifest, Customs Form 7512, to be baggage and to be deliverable to the owner on board the exporting vessel, such articles may be transferred by the express company, without a permit from the district director and without the use of a transfer ticket or other Customs formality, from its terminal to the exporting vessel for lading under Customs supervision, if the express company is bonded as a common carrier and is responsible under its bond for the delivery of the articles to the Customs officer in charge of the exporting vessel. The manifest shall show the name of the owner of the baggage and the name of the vessel on which he intends to sail. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553.)

§ 18.23 Change of destination; change of entry.

(a) The foreign destination of such merchandise may be changed by the parties in interest upon notice to the district director at the port of exit from the U.S. The district director at the port of exit, in his discretion, may report the application for a change of foreign destination to the district director at the port of entry. **[TDs 20909, 37340, 37460, 40351, 48505.]**

(b) Such merchandise may be entered for consumption or warehouse or under any other form of entry. If the merchandise is subject on importation to quarantine and regulations administered by the Bureau of Entomology and Plant Quarantine, it shall be entered for consumption or warehouse only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.) (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553.) **[TDs 17688, 49600, 52492.]**

§ 18.24 Retention of goods on dock; splitting of shipments.

(a) Upon written application of a party in interest and the written consent of the owner of the dock, the district director of Customs, in his discretion, may allow in-transit merchandise, including merchandise covered by a carnet, to remain on the dock under the supervision of a Customs officer without extra expense to the Government for a period not exceeding 90 days. Upon further application, additional extensions of 90 days or less, but not to exceed 1 year from the date of importation, may likewise be granted by the district director.* The district director may take possession of the merchandise at any time. **[TDs 37340, 37460, 48106(4), 48280(13), 48505, 52169, 71-70, 82-116.]**

(b) The splitting up of a shipment for exportation shall be permitted when exportation in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553.) **[TDs 71-70, 82-116.]**

Exportation From Customs Custody of Merchandise Unentered or Covered by an Unliquidated Consumption Entry, or Merchandise Denied Admission by the Government

§ 18.25 Direct exportation.

(a) Except as otherwise provided for in Subpart F of Part 145 of this chapter, relating to exportations by mail, when no entry has been made or completed for merchandise in Customs custody, or when the merchandise is covered by an unliquidated consumption entry, or when merchandise which has been entered in good faith is found to be prohibited under any law of the U.S., and such merchandise is to be exported directly without transportation to another port, four copies of Customs Form 7512 shall be filed. If a TIR carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged or canceled, as appropriate (see Part 114 of this chapter), and four copies of Form 7512 shall be filed. The district director may require an extra copy or copies of Form 7512 to be furnished for use in connection with delivery of the merchandise to the carrier named in the entry. If an A.T.A. carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged by the certification of the appropriate transportation and reexportation vouchers by Customs officers as necessary. **[TDs 46858, 48505, 50648, 52570, 52662, 53098, 53792, 53893, 71-70, 73-135, 82-116, 89-1.]**

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be required. (See also § 158.45 of this chapter.) **[TDs 47555, 52482, 72-258, 84-213.]**

(c) If the merchandise has been landed or is transferred from one vessel to another and has not been entered for consumption or, in the case of goods entered for consumption and rejected, such export declaration as required by § 30.3(a)(2) of the Foreign Trade Statistics Regulations (15 CFR 30.3(a)(2)) shall be filed. **[TDs 53399, 68-299.]**

(d) If the merchandise is exported in the importing vessel without landing, a representative of the exporting carrier who has knowledge of the facts shall certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge shall be made against the continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file, or if a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 shall be required as in the case of residue cargo for foreign ports. If the merchandise is covered by a TIR carnet, the carnet shall not be taken on charge (see § 114.22(c)(2) of this chapter). **[TDs 47555, 53893, 71-70, 84-213.]**

(e) The principal on any bond filed to guarantee direct exportation shall cause the merchandise to be exported and provide such evidence of exportation as required by the district director under § 113.55 of this chapter within 30 days of exportation. **[TD 84-213.]**

(f) Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in bond by sea, but shall be transferred directly from the importing to the exporting vessel. **[TD 84-213.]**

§ 18.26 Indirect exportation.

(a) When merchandise of the character enumerated in § 18.25(d) is to be transported in bond to another port for exportation, it may be entered for transportation and exportation in accordance with the procedure in § 18.20. Upon acceptance of the entry by Customs and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. In the case of merchandise prohibited entry by any Government agency, that fact shall be prominently noted on Customs Form 7512 for the information of the district director of Customs at the port of exportation. If the merchandise was imported under cover of a TIR carnet, the carnet shall be discharged or canceled at the port of importation and the merchandise transported under an entry on Customs Form 7512 (see § 18.25). If merchandise has been imported under cover of an A.T.A. carnet to be transported in bond to another port for exportation, the appropriate transit voucher shall be accepted in lieu of Customs Forms 7512. One transit voucher shall be certified by Customs officers at the port of importation and a second transit voucher, together with the reexportation voucher, shall be certified at the port of exportation. **[TDs 55801, 71-70, 82-116, 84-213.]**

(b) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1-18.8.

(c) If the merchandise is to be transferred after arrival at the selected port of exportation, the procedure prescribed in § 18.3(d) shall be followed. The provisions of §§ 18.23 and 18.24 shall also be followed in applicable cases.

(d) The bonded carrier shall cause the merchandise to be exported and provide such evidence of exportation as required by the district director under § 113.55 of this chapter within 30 days of exportation. **[TD 84-213.]**

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* "Any entered or unentered merchandise (except merchandise entered under § 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government * * *" (Tariff Act of 1930, sec. 491, as amended 19 U.S.C. 1491)

§ 18.27 Port marks.

Port marks may be added by authority of the district director and under the supervision of a Customs officer. The original marks and the port marks shall appear in all papers pertaining to the exportation.

Merchandise Not Otherwise Subject to Customs Control Exported Under Cover of a TIR *Carnet*

§ 18.41 Applicability.

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or nonbonded carriers. (80 Stat. 379, R.S. 251, as amended, secs. 551, 624, 46 Stat. 742, as amended; 19 U.S.C. 1551) **[TDs 71-70, 71-263.]**

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the district director of Customs. Any required export declarations shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR Part 30) and the Office of Export Control (15 CFR Part 386). The district director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination and supervision of loading, the district director shall cause the container or road vehicle to be sealed with Customs seals and ascertain that the TIR plates are properly affixed and sealed. (See § 18.4a.) In the case of heavy or bulky goods moving under cover of a TIR carnet, the district director shall cause a Customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise. **[TD 71-70.]**

§ 18.43 Indirect exportation.

(a) When merchandise is to move from one U.S. port to another for actual exportation at the second port, any export declarations required to be validated shall be filed in accordance with the port of origin procedure described in the applicable regulations of the Bureau of the Census and of the Office of Export Control. **[TD 71-70.]**

(b) The district director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. He shall remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the district director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the district director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest customs office or to the Customs office at the port of origin for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove Customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision. **[TD 71-70.]**

§ 18.45 Supervision of exportation.

The provisions of §§ 18.41 through 18.44 do not require the district director of Customs at the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier. **[TD 71-70.]**

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Sec.

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Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen Note 9, Harmonized Tariff Schedule of the U.S., unless otherwise noted.

Source: 28 FR 14763, Dec. 31, 1963, unless otherwise noted. §§ 19.40–19.49 added by T.D. 72-68, 37 FR 4186, Feb. 29, 1972.

§ 19.1 Classes of customs warehouses.

(a) Customs warehouses shall be designated according to the following classifications: **[TDs 22184, 48465, 50974, 53550, 55974, 89-1.]**

(1) *Class 1.* Premises owned or leased by the Government and used for the storage of merchandise undergoing examination by the Customs Officer, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises shall be held under "general order."

When such premises are not sufficient or available for the storage of seized and unclaimed goods, such goods may be stored in a warehouse of class 3, 4, or 5. So far as such warehouses are used for this purpose, they shall be designated "bonded stores." If there are no warehouses of these classes available, the district director may, with the approval of Headquarters, U.S. Customs Service, rent suitable premises for the storage of seized and unclaimed goods.

(2) *Class 2.* Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) *Class 3.* Public bonded warehouses used exclusively for the storage of imported merchandise. **[TD 53399.]**

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the district director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks. **[TD 82-204.]**

(5) *Class 5.* Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

(6) *Class 6.* Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of

imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

(7) *Class 7.* Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption. **[TD 55974.]**

(8) *Class 8.* Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision and at the expense of the proprietor. **[TD–89–1.]**

(b) The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, or 7 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require. **[TDs 53336, 55974, 76–277.]**

(c) *Construction:* When parts of buildings are used as Customs bonded warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications: **[TD 82–204.]**

(1) *Expanded metal.* The expanded metal shall be at least 9 gauge (of a diameter of .148 inches), with mesh openings not to exceed 2 inches in the larger dimension, and shall be welded to corner posts of at least 3 × 3 × 5/16 inch angle iron. The intermediate posts shall be at least 2 × 2 × 3/16 inch angle iron. Top, middle, and bottom rails of at least 2 × 2 × 3/16 inch angle iron are required.

(2) *Steel chain-link fence.* Steel chain-link fence fabric shall be at least 9 gauge (of a diameter of .148 inches) with mesh openings not to exceed 2 inches in the larger dimension. The wire mesh must be installed on a galvanized steel tubular frame consisting of 2⅞ inch outer diameter (O.D.) corner and gate posts, 2⅜ inch O.D. intermediate posts and 1⅝ inch O.D. top, middle, and bottom rails. The posts shall be affixed to the true floor and true ceiling in a manner which precludes their easy removal. The chain-link fabric shall be securely fastened to all corner posts using 3⅛ × ¾ inch tension bars and 11 gauge tension bands. There shall be one band for each foot in the height of the fence fabric. The bolts used to affix these bands to the fence shall be bent, peened, welded or altered to preclude the removal of the nut from the bolt. The fabric shall be fastened to the intermediate posts and top, middle, and bottom rails with 9 gauge tie wires, double wrapped, on one foot centers. In those cases where more than one width of fence fabric is required there shall be an overlap of at least one foot.

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than tenpenny nails to not less than 2 × 4 inch stud framing and held in place by ⅛ × 2 inch metal cover-strips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than ¾ inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength, to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1976. (Secs. 311, 312, 555, 556, 557, 560, 561, 562, 46 Stat. 691, as amended, 692, as amended, 743, 744, as amended, 745, as amended; 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562) **[TD 82–204.]**

General Provisions

§ 19.2 Applications to bond; bond; annual fee.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by § 19.5 of this chapter to establish a warehouse. If required by the district director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the applicant also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouses facilities. A warehouse facility shall be charged an annual fee as prescribed by § 19.5 of this chapter which will be paid to the Regional Commissioner within 14 days after the due date.

(b) The applicant shall submit evidence of fire insurance coverage on the proposed warehouse. If the applicant does not have fire insurance for the proposed warehouse, he shall submit a certificate signed by an officer or agent of each of two insurance companies stating that the building is acceptable for fire-insurance purposes. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipe lines and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in U.S. gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall accompany the application. When a part or parts of a building are to be used as the warehouse, there shall be given a detailed description of the materials and construction of all partitions. When the proprietor is the lessee of the premises covered by the application and

bond, he shall furnish a stipulation concurred in by the sureties, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will (1) transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse, (2) pay all duties, charges, or exactions due on such merchandise, or (3) otherwise dispose of such merchandise in accordance with the Customs laws and regulations. **[TD 78–80.]**

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.* On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the district director to furnish a new bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter; and if he fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt. (Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in § 19.3(e). The applicant may seek review of the decision to deny under the provisions of § 19.3(f) of this chapter within 10 days after notification. **[TDs 82-204, 84-213.]**

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a bonded warehouse shall be accompanied by the fee required by § 19.5 of this chapter.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished the proprietor shall advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer, (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision; **[TD 88–63.]**

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 years; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(f) *Procedure for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the district director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action. **[TD 82-204.]**

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Regional Commissioner may appeal the decision in the Court of International Trade. **[TD 85-90.]**

§ 19.4 Customs supervision over warehouses.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer. **[TDs 52019, 82-204.]**

§ 19.5 Fees.

Each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under the provisions of 31 U.S.C. 9701. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under the provisions of 19 U.S.C. 1555. The fees will be revised annually and published in the ***Federal Register*** and ***Customs Bulletin.*** **[TD 82-204.]**

§ 19.6 Deposits, withdrawals, partial releases and sealing requirements.

(a)(1) *Deposit in warehouse.* The district director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under Part 158, Subparts A and B, of this chapter by the district director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in § 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within two business days of agreement and provided to the district director on the appropriate cartage documents as set forth in § 125.31 of this chapter.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the district director for concealed shortages (i.e., § 158.5(a)), casualty loss (i.e., Part 158, Subpart C), destruction (i.e., § 158.43), or manipulation (i.e., § 19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any

joint report of discrepancy shall be promptly provided to the district director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability.* When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Partial releases.*—(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law within the same port by blanket withdrawal and thereafter removed from the warehouse in partial releases by the warehouse proprietor. Blanket withdrawals are not authorized for transportation in bond to another port. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in § 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in § 10.62(e) of this chapter.

(2) *Form Distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under subparagraph (3) of this section. The original shall be retained in the warehouse proprietor's records, as provided in § 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded by Customs to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's permit file folder. Each such release shall be consecutively numbered, and the number shall appear immediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in § 144.32 of this chapter. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be within two business days provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in § 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket withdrawal through individual partial release documents before the permit file folder is transmitted to Customs under § 19.12(a)(4).

(4) *Quantity of release.* Partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to: (1) break Customs in bond seals affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse: or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. **[TD 82-204.]**

§ 19.7 Expenses of labor and storage.

(a) All merchandise deposited in public stores or in bonded warehouses shall be held liable for the expenses of labor and storage chargeable thereon at the customary rates and for all other expenses accruing upon the goods. **[TDs 22346, 24894, 28306.]**

(b) The rates of storage and labor shall be agreed upon between the importer and the warehouse proprietor, but in case of disagreement the district director may, with the consent of all parties in interest, determine the rates to be charged.

(c) Except in cases provided for by § 141.102(d) of this chapter, when merchandise is stored in a public store under a warehouse entry, general order or otherwise, the charges for storage due the Government shall be paid before the packages are delivered. The charges shall be based upon the existing bonded warehouse tariff of the port for storage and labor. (Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556) **[CIE 395/40. TDs 52156, 73-175.]**

§ 19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.

Importers may, upon application approved by the district director on Customs Form 3499, examine, sample, and repack [12] or transfer merchandise in bonded warehouse. Where there will be no interference with the orderly conduct

[12] Repacking shall be considered a manipulation within the purview of sec. 562, Tariff Act of 1930, as amended. (Secs. 555, 556, 562, 46 Stat. 743, 745, as amended; 19 U.S.C. 1555, 1556, 1562)

of Customs business and no danger to the revenue prospective purchaser may be permitted to examine merchandise in bonded warehouses upon the written request of the owner, importer, consignee, or transferee. **[TDs 46325, 53336, 82-204.]**

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director within two business days of agreement.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the person named in a release order under § 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 5119-A, or other Customs form as designated by the district director. General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the district director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director. **[TD 82-204.]**

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the district director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person. **[TD 82-204.]**

Manipulation in Bonded Warehouses and Elsewhere

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(a) So far as applicable, the general provisions of the regulations governing warehouses bonded for the storage of imported merchandise shall apply to bonded manipulation warehouses and to other designated places of manipulation. **[TDs 41038, 48465, 49658, 89-1.]**

(b) Merchandise to be manipulated under § 562, Tariff Act of 1930, as amended, may be entered on Customs Form 7501 and sent directly to a storage-manipulation warehouse. **[TDs 84-129, 89-1.]**

(c) Warehouse proprietors shall not allow manipulation of merchandise without a permit issued by the district director. Merchandise entered for warehouse may be transferred to a storage-manipulation warehouse; or merchandise entered for storage-manipulation warehouse may be transferred after manipulation to the storage portion of the same warehouse, to another storage warehouse, or to a manufacturing warehouse of class 6. **[TD 84-213.]**

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the district director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the district director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of § 562, Tariff Act of 1930, as amended. If the district director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The proprietor shall not allow any manipulation to be conducted before a permit is issued or without the permission of the district director. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such § 562. **[TDs 47826 (6), 49295, 53792, 54067, 82-204, 84-213.]**

(e) No merchandise shall be manipulated elsewhere than in a bonded warehouse unless the merchandise has been regularly entered for consumption or warehouse and is of a class entitled to the warehousing privilege under § 557, Tariff Act of 1930, as amended. **[TD 49658.]**

(f) Upon compliance with the provisions of paragraph (d) of this section, manipulated merchandise may be further manipulated before withdrawal in cases where the district director is satisfied that this will not endanger the revenue or interfere with the efficient conduct of Customs business. The merchandise remaining in the warehouse shall be properly repacked after each manipulation.

(g) Except as provided in § 144.38 of this chapter, manipulated merchandise may be withdrawn under any form of withdrawal, but no withdrawal shall be accepted for less than an entire repacked package. Each type of withdrawal filed shall contain a summary statement indicating the quantity in the warehouse account after manipulation and immediately before the withdrawal, the quantity withdrawn on the particular withdrawal, and the quantity remaining in the

warehouse after the withdrawal. When merchandise covered by a consumption entry is manipulated elsewhere than in a bonded warehouse and thereafter withdrawn for consumption, the withdrawal shall be on Customs Form 7505 and shall be liquidated in accordance with § 159.9 of this chapter. (Secs. 556, 562, 46 Stat. 743, 745, as amended; 19 U.S.C. 1556, 1562) **[TDs 43151, 53792, 84–771, 85–38.]**

Accounts

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured, smelted, refined or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs;

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordiary shortage or damage (one percent or more of the value of the merchandise in an entry) shall be immediately brought to the attention of the district director, and confirmed in writing within 2 business days after the shortage, overage, or damage has been brought to the attention of the district.

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall (i) review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry, (ii) notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and (iii) file the permit file folder with Customs within 10 business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in § 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission on Customs Form 300.

(6) *Merchandise not withdrawn.* The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the district director upon receipt from Customs of the Customs Form 6043.

(7) *Disclosure of information only to authorized personnel.* The warehouse proprietor or his employees shall safeguard and shall not disclose proprietary information contained in, or proprietary information contained on, documents to be included in the permit file folder to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the permit file folder or document relates or their authorized agent. Unauthorized disclosure shall be grounds for suspension or revocation under the provisions of § 19.3(e) of the proprietor's status as a bonded warehouse operator.

(b) *Security and storage.* The warehouse proprietor shall comply with the following security and storage requirements:

(1) *Supervision by warehouse proprietor.* The warehouse proprietor shall supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) *Inspection and security of permit file folders.* The permit file folders maintained by the warehouse proprietor shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours;

(3) *Security of warehouse.* The warehouse proprietor shall maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This shall be accomplished by meeting the standards and recommended specifications contained in T.D. 72-56 to the extent those standards and recommendations do not conflict with any local, state or Federal standard for the safe and sanitary storage of merchandise. In the event of a conflict the local, state, or Federal standard, shall control;

(4) *Bonded tanks.* All inlets and outlets to bonded tanks shall be secured with locks or in-bond seals.

(5) *Safe and sanitary storage.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. All trash and waste shall be promptly removed from the bonded area. No fires shall be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(6) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately. The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order or seizure shall be stored in the same location and not mixed with goods covered by any other entry, general order or seizure unless approval has been given in writing by the district director for an exception from this requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance. **[TDs 82-204, 84-213.]**

Manufacturing Warehouses

§ 19.13 Requirements for establishment of warehouse.

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing warehouses if the district director is satisfied that their location, construction, and arrangement afford adequate protection to the revenue. Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant, apply to bonded manufacturing warehouses. **[TDs 38547, 47195, 52395, 82-204, 89-1.]**

(b) Application for the establishment of such a warehouse shall be made to the district director for the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in § 19.2 with respect to the application to bond the premises and the execution of the bond shall be followed. **[TDs 49365, 53399.]**

(d) A list of all articles intended to be manufactured in the warehouse shall be filed with the district director. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable. **[TD 89-1.]**

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula. **[TD 18278.]**

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression. **[TDs 21799, 53336.]**

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis. The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards and specifications of T.D. 72-56. The proprietor shall mark each package with the correct warehouse entry number and date until manufacturing takes place. After manufacture, the proprietor shall mark each package of the finished product with the warehouse entry number and date. **[TDs 82-204, 84-213.]**

(h) Entry shall be made and duties paid, where applicable, on any imported machinery or other equipment or apparatus that is for the construction of the warehouse or for the pursuit of its business. **[TD 84-213.]**

§ 19.13a Recordkeeping requirements.

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of § 19.12(a). In addition, the proprietor shall:

(a) Record all transfers from any storage area to a manufacturing area, and record all transfers from a manufacturing area to a finished product storage area, in the proprietor's inventory control and accounting records;

(b) Take an annual physical inventory of the merchandise in conjunction with the annual submission required by § 19.12(a)(5); and

(c) Record all manufacturing operations performed within the warehouse with sufficient detail to determine whether there has been compliance with the manufacturing formula filed with Customs and to permit Customs to audit use and disposition of the merchandise. **[TD 84-213.]**

§ 19.14 Materials for use in manufacturing warehouse.

(a) Imported merchandise to be used in a bonded manufacturing warehouse shall be entered on Customs Form 7501 at the port at which such warehouse is located. Such form shall be prepared in 5 copies and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. If the merchandise has been imported or entered for warehouse at another port, it may be forwarded to the port at which the manufacturing warehouse is located under an immediate transportation without appraisement entry or warehouse withdrawal for transportation, whichever is applicable. **[TDs 18868, 73-312, 84-129.]**

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required. **[TD 84-213.]**

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor:

Application To Receive Free Materials

Port of_____,
_____, 19____

To the District Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____, the following described articles and materials:

Marks	Nos.	Description	Quantity	Value

(Signature)

Port _____, _____ 19_____.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

District Director

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required. **[TDs 55570, 82-204, 84-213, 85-123.]**

(e) *Monthly statement.* At the end of each month, the proprietor shall file with the district director a statement of all imported merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles. The statement shall report this information for each warehouse entry represented in the manufacturing process. **[TD 84-213.]**

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

(a) Except cigars manufactured in bond and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom shall be withdrawn or removed therefrom except for direct exportation or transportation and exportation in bond to a foreign country. The exportation or shipment shall in every case be under the supervision of Customs. **[TDs 52041, 82-204, 89-1.]**

(b) The coverings or containers of imported articles or materials, whether or not subject to duty apart from their contents, are not "articles or materials" within the meaning of § 311, Tariff Act of 1930, as amended, and need not be exported, but may be withdrawn from the warehouse for consumption under Customs Form 7505 upon payment of the duties applicable to such coverings or containers in their condition as withdrawn. **[TD 51685.]**

(c) Labels, coverings, and empty containers imported to be used in putting up the manufactured articles, if subject to duty or tax, constitute "articles or materials" within the meaning of § 311, Tariff Act of 1930, as amended, but may be withdrawn for consumption upon payment of all applicable duties and taxes.

(d) When waste or a byproduct is withdrawn for consumption, Customs Form 7505 shall be used, modified as necessary and describing in detail the waste or byproduct and the imported material from which it was produced. Such waste or byproduct shall be appraised at its wholesale value at the time of withdrawal in the principal markets of the country from which the material was imported, determined in accordance with the provisions of § 402, Tariff Act of 1930, as amended. Upon payment of the duty, the withdrawal permit shall be issued for delivery and a proper credit given upon the manufacturer's bond. **[TDs 30458, 30516.]**

(e) Each withdrawal covering the items which are permitted to be withdrawn for consumption shall contain a summary statement thereon, showing for each class of merchandise the quantity on hand in the account, the quantity covered by the withdrawal presented, and the quantity remaining in the warehouse account, if any. **[TD 53792.]**

(f) The general procedure covering warehouse withdrawals for exportation shall be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse, except that in the case of flour each copy of Customs Form 7512 shall bear the following legend: **[TDs 48999, 49435, 89-1.]**

Produced from wheat imported after September 15, 1930, without payment of duty thereon. Must not be exported to Cuba without permission from the district director at the port of withdrawal.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of § 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate export, except for distilled spirits which may be withdrawn under the provisions of § 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate export, or may be withdrawn pursuant to § 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). Such withdrawal shall be effected on Customs Form 7512, as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter. **[TDs 52265, 53792, 55653, 73-62, 73-175, 80-271, 84-213.]**

(2) Domestic distilled spirits transferred from a Customs-bonded manufacturing warehouse, Class 6, to a Customs-bonded storage warehouse, Class 2 or 3, in accordance with § 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), shall be rewarehoused in accordance with the procedure for withdrawal and rewarehousing set forth in subparagraph (1) of this section. For other regulations concerning the entry and withdrawal of distilled spirits, see § 144.15 of this chapter. **[TDs 73-62, 73-175, 78-298, 80-271.]**

(h) No merchandise manufactured in a bonded manufacturing warehouse may be withdrawn by a person other than the manufacturer either from the manufacturing warehouse or from a warehouse where the merchandise is stored awaiting direct exportation, unless an authorization of the manufacturer is endorsed on the face of the withdrawal, or the manufacturer previously and in writing has transferred the right of withdrawal. **[TD 48786.]**

(i) When spirits and wines are withdrawn for shipment to Puerto Rico under § 311, Tariff Act of 1930, as amended, the procedure outlined in § 7.1 of this chapter shall be followed.

(j) As proof of manufacture and exportation, the manufacturer, within 6 months from the date of demand by the district director, shall file in the case of each transaction or period of manufacture a statement certified by the warehouse proprietor, showing the date and number of the

bond, the quantity and identity of the dutiable or taxable merchandise used, and the quantity and description of the articles into which it has been manufactured, together with the quantities of any byproducts and waste produced. In the case of articles manufactured with the use of distilled spirits, the statement shall also be verified by the foreman or chemist of the factory and shall show the number of packages of spirits used, the marks and numbers, the number of wine, proof and taxable gallons, and the degree of proof. **[TDs 53268, 53336, 84-213.]**

(k) The same proofs of exportation shall be required as in the case of other warehouse withdrawals for exportation.

(l) When the fact of exportation of all the products has been established by such proofs and any byproducts and waste have been exported or released for consumption, the bond given by the manufacturer, or the charges against his bond, shall be canceled. **[TD 84-213.]**

(m) Shortage, irregular delivery, and nondelivery occurring with respect to merchandise withdrawn from bonded manufacturing warehouse while it is under transportation in bond shall be charged against the bonded carrier. (Secs. 311, 624, 46 Stat. 691, as amended, 759; 19 U.S.C. 66, 1311, 1624.) **[TD 47222.]**

§ 19.16 [Reserved TD 87-75.]

Smelting and Refining Warehouses

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in § 312, Tariff Act of 1930, as amended, to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Chapters 26, 71, 72, and 73, HTSUS (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by § 19.5. **[TDs 41494, 52395, 55974, 82-204, 89-1.]**

(b) Reserved TD 84-213.

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the district director approves such discontinuance and the proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires. **[TD 82-204.]**

(d) Upon the importation at any seaboard or frontier port of the U.S. of metal-bearing materials in any form intended for a bonded smelting or refining warehouse situated at some other port of entry, they may be forwarded under an immediate transportation without appraisement entry. **[TDs 37775, 55974.]**

(e) *Bond.* Upon the arrival of imported metal-bearing materials in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be on file. The district director shall thereupon issue a permit to the inspector to send such metal-bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry. **[TDs 40651, 53399, 55974, 72-244, 74-227, 82-204, 84-213.]**

(f) Bonded metal-bearing materials shall be kept separate and distinct from nonbonded material until they have been sampled and weighed. The proprietor shall maintain a report of sampling, weighing, and assay of each shipment of bonded materials received into the warehouse for 5 years after liquidation of the warehouse entry for shipment. **[TDs 55974, 74-297, 84-213.]**

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each Regional Director, Regulatory Audit, involved by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. Each district director in whose district a plant or plants are located shall be responsible for the determination as to the correctness of the inventory report insofar as the amounts held at plants under his jurisdiction are concerned. All discrepancies which cannot be reconciled by the district director shall be reported to Headquarters, U.S. Customs Service. If Headquarters finds that the aggregate quantity of dutiable metal at the several plants does not equal the quantity charged against the blanket bond, duties shall be collected for the quantity determined to be deficient. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312.) **[TDs 55974, 74-247, 82-204.]**

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

(a) Except where absolute deductions have been allowed in the liquidation of the entry for losses on copper, lead, and zinc content of metal-bearing materials, pursuant to Chapter 26, Additional U.S. Note 1, HTSUS (see § 151.55 of this chapter), the actual percentage of losses by weight shall be allowed if more than 90 percent by weight of: (1) The zinc content initially treated at any lead plant, (2) the copper content of the imported materials treated at any zinc plant, or (3) the copper, lead, or zinc content of the imported material initially treated at any plant other than a copper, lead, or zinc plant is lost in processing such materials. Such actual percentage of losses by weight of the metal content shall be that shown by the manufacturer's annual statement. Such losses shall be applied in the liquidation of the entry to materials entered for consumption or for warehouse, during a 12-month period beginning on the first day of the month nearest to 90 days after the close of the manufacturer's fiscal year immediately preceding such 90-day period, provided the importer makes claim therefor in writing at the time the merchandise is entered. No further wastage shall be allowed. The full dutiable contents of such metal-bearing materials, as ascertained by commercial assay made by the Government chemists, less the wastage allowance (including dutiable metals entirely lost in smelting or refining, or both), shall constitute the quantity of dutiable metal which must be either exported, duty-paid, or transferred to another bonded warehouse in order to secure the

cancellation of the charge made against the proprietor's bond as shown by the warehouse or rewarehouse entry account. **[TDs 35885, 38367, 41494, 45663, 47404, 52395, 52626, 53336, 53399, 53792, 54933, 55228, 55974, 73-175, 89-1.]**

(b) Upon the withdrawal for consumption of metal so smelted or refined, or both, duty shall be collected thereon without the allowance for wastage, except where the metal was transferred to a bonded Customs warehouse other than a smelting warehouse and withdrawn therefrom for consumption. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage allowable (see § 19.22) prior to being physically released from Customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant or plants covered by the bond at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required at the time of filing the withdrawal. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312) **[TDs 55974, 82-89.]**

§ 19.19 Manufacturers' records; annual statement.

(a) Every manufacturer engaged in smelting or refining, or both, shall immediately notify the district director of Customs for the district in which the plant is located of any material change in the character of the metal-bearing materials smelted or refined and of any change in the methods of smelting or refining. Each plant for which any of the deductions provided for in Chapter 26, Additional U.S. Note 1, HTSUS is to be claimed shall maintain complete smelting and refining records showing the receipts and disposition of each shipment of materials received in the plant. If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section. These records shall be retained for a period of not less than 5 years. In the case of records forming the basis of such an annual statement, the period for retention shall run from the date of the related annual statement. All such records shall be made available to the district director of Customs for such inspection and verification as he may deem advisable. **[TDs 41494, 54442, 54933, 55974, 67-139, 82-204, 89-1.]**

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the Regional Director, Regulatory Audit for the district in which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse, or both, shall be in lieu of the warehouse proprietors submission required by § 19.12. No specific form is prescribed in which such statement shall be prepared. As basic information, the statement shall show the quantities of metal-bearing materials on hand at the beginning of the period and the dutiable contents thereof; the quantities of metal-bearing materials received during the period and the dutiable contents thereof; the total metal-bearing materials to be accounted for and the dutiable contents thereof; the quantities of metal-bearing materials on hand at the end of the period and the dutiable contents thereof; and the quantities of metal-bearing materials worked during the period and the dutiable contents thereof. The statement of the quantity of metal-bearing materials worked during the period shall show the quantity of foreign material and the quantity of domestic material put in process during the smelting operations. The statement shall contain such further information concerning the quantities and kinds of metals and intermediary products produced at the plant as will show the wastage sustained in the smelting and refining operation. **[TDs 82-204, 89-1.]**

§ 19.20 Withdrawal of products from bonded smelting or refining warehouses.

(a) *For exportation.* The general procedure governing warehouse withdrawals for exportation shall be followed in the case of the withdrawal for exportation of dutiable metal from a bonded smelting or refining warehouse. **[TDs 41494, 53792, 55974.]**

(b) *For transfer to another bonded warehouse.* (1) Withdrawal for transfer to another bonded warehouse shall be at the risk and expense of the applicant, and the general regulations governing the transfer of bonded merchandise from one warehouse to another or the transfer of imported materials from a bonded storage warehouse to a bonded manufacturing warehouse shall be followed so far as applicable.

(2) In the case of transportation to another port, the transportation entry shall show the quantity of metal withdrawn, the wastage applicable thereto, and the imported material from which such metal was produced, together with any dutiable metal charged on entry. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312)

§ 19.21 Smelting and refining in separate establishments.

(a) If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported materials in a bonded smelting warehouse may be removed therefrom for shipment to a bonded refining warehouse located at the same or another port under the general procedure for transfer from one bonded warehouse to another. **[TDs 41494, 52626.]**

(b) When the transfer is to a bonded refining warehouse located at another port, the smelted and unrefined products or bullion obtained from the smelting of the imported material shall be weighed, sampled, and assayed before withdrawal, the sampling to be performed under Government supervision in accordance with the § 19.4 commercial practice in effect at the plant. A report of sampling, weight, and assay of transferred material shall be maintained for 5 years after liquidation of the warehouse entry. **[TDs 82-204, 84-213.]**

(c) The withdrawal for transportation shall show the gross weight of the smelted and unrefined products withdrawn, the weight of the dutiable metal contained therein, the wastage applicable thereto and the duties properly chargeable on the withdrawn products as shown by the import entry. **[TDs 34280, 55974.]**

(d) The rewarehouse entry covering the smelted and unrefined products at the bonded refining warehouse to which they are transferred shall be made out in accordance with the weights and duties shown on the withdrawal for transportation.

(e) Upon withdrawal of the metal from the bonded refining warehouse for export, the warehouse account of the refining warehouse shall be credited with the amount of metal so withdrawn, plus the refining wastage prescribed for said refining warehouse, plus the smelting wastage prescribed for the bonded smelting warehouse in which the smelted and unrefined products were produced, together with the amount of any dutiable metals entirely lost in the smelting or refining, or both. However, when the metal is withdrawn for consumption, duty shall be collected on an amount of metal-bearing materials in their condition as imported equivalent to that from which such metal would be producible. No allowance for either smelting or refining wastage shall be permitted, except where the metal is withdrawn from a Customs warehouse other than a bonded smelting and refining warehouse. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312) **[TD 55974.]**

§ 19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.

Upon withdrawal for exportation of metal from a bonded warehouse engaged in refining, or smelting and refining, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the warehouse account shall be credited with the quantity of metal so withdrawn, plus (a) the refining wastage allowance prescribed for that establishment, and (b) the smelting wastage allowance prescribed for the establishment in which the imported materials were smelted, and (c) any dutiable metals shown on the warehouse entry or the rewarehouse entry filed at the first-mentioned warehouse which have been lost and are attributable to the exported product. However, upon withdrawal of such refined metal for consumption, no allowance shall be made for wastage except where the withdrawal is made from a bonded Customs warehouse other than a bonded smelting and refining warehouse. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312) **[TDs 41494, 52626, 53399, 55974.]**

§ 19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.

On exportation of metal pursuant to the provisions of section 312(b)(1), Tariff Act of 1930, as amended, the general procedure covering warehouse withdrawals for exportation shall be followed. The proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of withdrawals on Customs Form 7512, in addition to any other copies required by the regulations, to enable the district director at the port of withdrawal to forward a copy to the district director for each district where credit is to be applied. Such withdrawals shall designate the plant or plants which are to receive the credit, shall specify the warehouse entry number or numbers to which the credit is to be applied, and shall state the quantity of dutiable metal which is to be applied to each warehouse entry specified, and when any of the credits specified represent the last withdrawal against a particular warehouse entry, the words "final withdrawal" shall be shown on the withdrawal. When two or more plants in a given district are designated to receive credit, sufficient copies of the withdrawals shall be prepared to cover each such plant and entry. If at the time of withdrawal the warehouse proprietor does not know the plants or warehouse entry numbers which are to be credited with the withdrawal, or the metallic content of the dutiable metal being exported, the preparation of the before-mentioned copies of Customs Form 7512 may be postponed for a period of not longer than 30 days from the date of the movement of the dutiable metal from the plant. In such cases, a so-called memorandum withdrawal, in the number of copies provided for in § 144.37 of this chapter, may be used in the first instance for the purpose of obtaining the required Customs record of the exportation of the dutiable metal under Customs supervision. All memorandum withdrawals shall be conspicuously endorsed "Memorandum Withdrawal." (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312) **[TDs 41494, 51218, 53792, 55974, 73–175, 89–1.]**

§ 19.24 Theoretical transfer without physical shipment of dutiable metal.

(a) Transfer may be made from one port of entry to another by a withdrawal for transportation and rewarehouse executed in regular form without physical shipment of the metal, provided enough like metal in any form is on hand at the establishment to which the theoretical transfer is made to satisfy the new bond obligations. **[TDs 41021, 50267, 55974.]**

(b) The wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on the transfer withdrawal and set up as a part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant where the theoretical rewarehousing was effect (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312)

§ 19.25 Credit to be applied under various forms of withdrawals.

(a) The warehouse entry account of the plant designated in the withdrawal to receive credit for the exportation shall be credited with the following: **[TDs 53792, 55974.]**

(1) The quantity of dutiable metal exported.

(2) The wastage in effect on the date of entry at the plant of initial treatment of such materials.

(3) The proportion of any other dutiable metals in the importation being credited which were lost at the said plant in the production of a quantity of dutiable metal equal to that exported.

(b) If credit is being applied to a charge set up by a theoretical transfer under § 19.24 at the plant designated in the withdrawal to receive the credit, the wastages to be applied shall be those set up at such plant in connection with the theoretical transfer, irrespective of the date of the withdrawal. **[TD 55974.]**

(c) On the transfer of dutiable metal to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal to receive the credit in the manner provided for in paragraph (a) of this section with respect to withdrawals for exportation. The charge so credited at the plant shall be set up on the warehouse entry account of the storage warehouse to which the dutiable metal has been transferred. In the case of the withdrawal of dutiable metal for transfer to a bonded manufacturing warehouse, credit shall be applied in the same manner at the plant designated in the withdrawal to receive the credit, but the charge set upon the warehouse entry account of the bonded manufacturing warehouse shall be limited to the quantity of dutiable metal transferred to such warehouse. (Sec. 312, 46 Stat. 692, as amended; 19 U.S.C. 1312) **[TDs 53792, 55974.]**

Space Bonded for the Storage of Wheat

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 161.1 of this chapter. **[TDs 53759, 67-281, 82-204.]**

§ 19.30 Domestic wheat not to be allowed in bonded space.

The presence of domestic wheat in space bonded for the storage of imported wheat shall not be permitted. (Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.

All wheat shall be stored by class and grade according to the Official Grain Standards of the U.S. or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of indentity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot. (Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

Cross Reference: For regulations respecting Official Grain Standards of the U.S., see 7 CFR, Part 26.

§ 19.32 Wheat manipulation; reconditioning.

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of § 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the district director. All such operations shall be performed under Customs supervision adequate to preclude unauthorized access to the wheat. (Secs. 555, 556, 562, 46 Stat. 743, 745, as amended; 19 U.S.C. 1555, 1556, 1562)

§ 19.33 General order; transportation in bond.

The provisions of §§ 19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation. (Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

§ 19.34 Customs supervision.

District directors shall exercise such supervision and control over the transactions covered by §§ 19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of Customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous Customs custody shall maintain such records as will enable Customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to Customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 5 years from the date of the transaction. District directors shall from time to time request the appropriate Customs officer for the district concerned to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous Customs custody as may be deemed necessary to ascertain whether there has been any failure to comply with the applicable Customs laws and regulations. (Sec. 556, 46 Stat. 743, sec. 646, 67 Stat. 520; 19 U.S.C. 1556, 1646a) **[TDs 54442, 79-159, 82-204.]**

Container Stations

§ 19.40 Establishment, relocation or alteration of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon the filing of an application therefore and its approval by the district director and the posting of a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter in such amount as the district director shall require. **[TDs 82-135, 83-56, 84-213, 85-72.]**

(b) Alterations to or relocation of a container station within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a container station shall be accompanied by the fee required by paragraph (c) of this section. **[TD 85-72.]**

(c)(1) Customs shall charge a fee to establish, relocate or alter a container station, and publish a general notice in the

Federal Register and ***Customs Bulletin*** setting forth a fee schedule, to be revised periodically to reflect increased costs, to establish, relocate or alter the container station. The published revised fee schedule shall remain in effect until changed.

(2) The fee, rounded off to the nearest dollar, shall be calculated in accordance with § 24.17(d) of this chapter. The fee shall be based upon the amount of time the average service requires of the Customs officers performing the service. **[TDs 83–56, 85–72.]**

§ 19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unlading to a designated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see Subpart A of Part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo. In either circumstance, excess loose cargo, as part of containerized cargo, may accompany the container to the container station. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499) **[TDs 72–68, 82–135.]**

§ 19.42 Application for transfer of merchandise.

The container station operator may file an application for the transfer of a container intact to the station. The application shall be in duplicate in the following or substantially similar format: **[TD 72–68.]**

U.S. Customs Service

Application and permit to transfer containerized cargo to a container station

Date _____

Application is made to transfer the containers and their contents listed below which arrived on _____(Carrier) on _____(Date) at Pier _____ to the _____(Container station)

An abstract of the carrier's manifest covering the containers by B/L No., marks, numbers, contents, consignee, etc., is attached hereto.

List of containers by marks and numbers only

_____

_____

_____

_____
(Signature of authorized agent of container station)

We concur: _____
(Signature of agent of importing carrier)

Transfer Record

Delivered to _____ (cartman), C.H.L. No. _____ in apparent good order and condition except as noted:

Truck No.	Container numbers	Date	Signature of inspector	Signature of cartman	Received signature container operator

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the district director. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499) **[TDs 72–68, 82–135.]**

§ 19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a bonded carrier, the bonded carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b) of this section, the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of Subpart A, Part 158 of this chapter, relating to quantity determinations, and discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of

lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container. (Sec. 448, 46 Stat. 714, as amended; 19 U.S.C. 1448) **[TDs 72-68, 82-135.]**

§ 19.45 Transfer of merchandise, approval and method.

Approval of the application by the district director shall serve as a permit to transfer the container and its contents to the station. Except when the container station operator is moving the merchandise to his own station by his own vehicle, the merchandise may only be transferred to a container station by a bonded cartman or bonded carrier. The station operator, cartman or carrier shall receipt for the merchandise on both copies of the application. (R.S. 251, as amended, secs. 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759; 19 U.S.C. 66, 1551, 1565, 1624) **[TDs 72-68, 74-54.]**

§ 19.46 Employee lists.

A permit shall not be granted to an operator to transfer a container or containers to a container station, if the operator, within 30 calendar days after the date of receipt of a written demand by the district director, does not furnish a written list of names, addresses, social security numbers, and dates and places of birth of persons employed by him in connection with the movement, receipt, storage or delivery of imported merchandise. Having furnished such a list, no new permit shall be issued to an operator who has not within 10 calendar days after the employment of any new personnel employed in connection with the movement, receipt, storage, or delivery of imported merchandise, advised the district director in writing of the names, addresses, social security numbers, and dates and places of birth of such new employees. The operator shall, within 10 calendar days, advise the district director if the employment of any employee is terminated. A person shall not be deemed to be employed by an operator if he is an officer or employee of an independent contractor engaged by the operator to move, receive, store, deliver, or otherwise handle imported merchandise. **[TD 72-68.]**

§ 19.47 Security.

The space to be used for the purposes of breaking bulk and delivering cargo shall be properly secured against access by unauthorized persons, including persons not on the list of current employees furnished to the district director by the container station operator, the principal on the bond, as required by § 19.46. A suitable working and office space for the use of Customs officers and employees performing functions in the area shall also be provided. **[TD 72-68.]**

§ 19.48 Suspension or revocation of the privilege of operating a container station; hearings.

(a) *Grounds for suspension or revocation.* The district director may revoke or suspend the privilege of operating a container station if: **[TDs 72-68, 73-286.]**

(1) The privilege was obtained through fraud or the misstatement of a material fact;

(2) The container station operator refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a container station;

(3) The container station operator or an officer of a corporation which has been granted the privilege of operating a container station is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision; **[TD 88-63.]**

(4) The container station operator fails to retain merchandise which has been designated for examination;

(5) The container station operator does not provide secure facilities or properly safeguard merchandise within the container station;

(6) The container station operator fails to furnish a current list of names, addresses, and other information required by § 19.46; or

(7) The bond required by § 19.40 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice and appeal.* The district director shall suspend or revoke the privilege of operating a container station by serving notice of the proposed action in writing upon the container station operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the container station operator unless he shall file with the district director a written notice of appeal. The container station operator may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the container station operator to the statement of the district director. The container station operator, in his notice of appeal, may request a hearing.

(c) *Hearing on appeal.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The container station operator shall be notified of the time and place of the hearing at least 5 days prior thereto. The container station operator may be represented by counsel at the revocation or suspension hearing. All testimony in the proceeding shall be subject to cross-examination. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the container station operator. At the conclusion of such proceeding or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of any hearing, to the Commissioner of Customs, together with his recommendation for final action. Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the container station operator may submit to the Commissioner of Customs, in writing, additional views and arguments on the basis of such record. If neither the container station operator nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs. The Commissioner shall thereafter render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing

officer or the district director. Such decision shall be transmitted to the district director and served by him on the container station operator. (19 U.S.C. 1499, 1623)

§ 19.49 Entry of containerized merchandise.

Merchandise not entered within the lay order period, or extension thereof, shall be placed in general order. The importing carrier shall issue carrier's certificates for individual shipments in a container. Entries covering merchandise transferred to a container station shall clearly show that the merchandise is at the container station. (Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484) **[TD 72-68.]**

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Sec.

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24.73 Miscellaneous claims.

Authority: R.S. 251, sec. 624, 46 Stat. 759, sec. 501, 65 Stat. 290, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 31 U.S.C. 9701, Gen. Note 9, Harmonized Tariff Schedule of the United States, unless otherwise noted.

Source: 28 FR 14808, Dec. 31, 1963, unless otherwise noted.

§ 24.1 Collection of Customs duties, taxes, and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, and other charges (see §§ 111.29(b) and 141.1(b) of this chapter): **[TDs 45344, 51278, 53303, 55642, 82-134.]**

(1) Any form of U.S. currency or coin legally current at time of acceptance shall be accepted.

(2) Any bank draft, cashier's check, or certified check drawn on a national or state bank or trust company of the U.S. or a bank in Puerto Rico or any possession of the U.S. if such draft or checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted.

(3)(i) An uncertified check drawn by an interested party on a national or state bank or trust company of the U.S. or a bank in Puerto Rico or any possession of the U.S. if such checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted if there is on file with the district director a bond to secure the payment of the duties, taxes, or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the district director to make payment in such manner. In determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. For purposes of this paragraph, a customhouse broker, not licensed in the district where an entry is filed, is an interested party for the purpose of Customs acceptance of such broker's own check, provided the broker has on file the necessary power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should, the check be dishonored. **[TDs 84-42, 84-213, 85-92.]**

(ii) If, during the preceding 12-month period, an importer or interested party has paid duties or any other obligation by check and more than one check is returned dishonored by the debtor's financial institution, the district director shall require a certified check, money order or cash from the importer or interested party for each subsequent payment until such time that the district director is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution. **[TD 85-92.]**

(4) A U.S. Government check endorsed by the payee to the U.S. Customs Service, a domestic traveler's check, or a U.S. postal, bank, express, or telegraph money order shall be accepted. Before accepting this form of payment the Customs cashier or other employee authorized to receive Customs collections shall require such identification in the way of a current driver's license issued by a state of the U.S., or a current passport properly authenticated by the Department of State, or a current credit card issued by one of the numerous travel agencies or clubs, or other credit data, etc., from which he can verify the identity and signature of the person tendering such check or money order. **[TD 67-134.]**

(5) The face amount of a bank draft, cashier's check, certified check, or uncertified check tendered in accordance with this paragraph shall not exceed the amount due by more than $1 and any required change is authorized to be made out of any available cash funds on hand.

(6) The face amount of a U.S. Government check, traveler's check, or money order tendered in accordance with this paragraph shall not exceed the amount due by more than $50 and any required change is authorized to be made out of any available cash funds on hand. **[TD 73-103.]**

(7) Credit or charge cards, which have been authorized by the Commissioner of Customs, may be used for the payment of duties, taxes and/or other charges at designated Customs-serviced locations. Payment by this manner is limited to non-commercial entries and is subject to ultimate collection from the credit card company. Persons paying by charge or credit card will remain liable for all such charges until paid. Information as to those credit card companies

authorized by Customs may be obtained from Customs officers. **[TD 87-25.]**

(b) At piers, terminals, bridges, airports, and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the U.S., shall be accepted by inspectors of Customs and other Customs employees authorized to receive Customs collections in payment of duties, taxes, and other charges on noncommercial importations subject to the identification requirements of subparagraph (4) of paragraph (a) of this section. However, a personal check received under this paragraph and a U.S. Government check, traveler's check, or money order received under paragraph (a) of this section by such inspectors of Customs and other Customs employees shall be subject to the following conditions: **[TDs 53860, 53959, 55642.]**

(1) Where the amount is less than $100 and the identification requirements of subparagraph (4) of paragraph (a) of this section have been met, the Customs employee accepting the check or money order shall show his name and badge number on the collection voucher and on the reverse side of the check or money order as well as the serial number of the voucher or other form of voucher identification so that the check or money order can be easily associated with the voucher. This information shall be shown immediately above the space where the endorsement stamp will be placed. **[TD 67-134.]**

(2) Where the amount is $100 or more, in addition to the requirements of subparagraph (1) of this paragraph the Customs employee accepting the check or money order shall obtain the approval of the Customs officer in charge who also shall personally verify the identification data and indicate his approval by initialing the collection voucher below the signature of the Customs employee who approved the receipt of the check or money order.

(3) A personal check tendered in accordance with this paragraph shall be accepted only when drawn for the amount of the duties, taxes, and other charges to be paid by such check.

(c) Checks on foreign banks, foreign travelers' checks, and commercial drafts or bills of exchange subject to acceptance by the drawees shall not be accepted. **[TDs 53339, 55642.]**

(d) Checks and other negotiable papers covering duties, taxes, and other Customs charges shall be made payable to the U.S. Customs Service. (R.S. 3009, 3473, as amended, sec. 1, 36 Stat. 965, as amended, sec. 648, 46 Stat. 762; 19 U.S.C. 197, 198, 1648) **[TD 67-134.]**

§ 24.2 Persons authorized to receive Customs collections.

District directors in charge of ports of entry, Customs cashiers, Customs inspectors, Customs dock tellers, and such other officers and employees as the district director shall designate shall receive Customs collections.

§ 24.3 Bills and accounts; receipts.

(a) Any bill or account for money due the U.S. shall be rendered by an authorized Customs officer or employee on an official form.

(b) A receipt for the payment of estimated Customs duties shall be provided a payer at the time of payment if he furnishes with his payment an additional copy of the documentation submitted in support of the payment. The appropriate Customs official shall validate the additional copy as paid and return it to the payer. Otherwise, a copy of the document filed by the payer and the payer's cancelled check shall constitute evidence of payment. **[TDs 74-73, 79-221.]**

(c) A copy of a Customs bill validated as paid will not normally be provided a payer. If a bill is paid by check, the copy of the Customs bill identified as "Payer's Copy" and the payer's cancelled check shall constitute evidence of such payment to Customs. Should a payer desire evidence of receipt, both the "U.S. Customs Service Copy" and the "Payer's Copy" of the bill and, in the case of payments by mail, a stamped, self-addressed envelope, shall be submitted. The "Payer's Copy" of the bill shall then be marked paid by the appropriate Customs official and returned to the payer. **[TDs 53339, 53897, 74-73.]**

(d) Every payment which is not made in person shall be accompanied by the original bill or by a communication containing sufficient information to identify the account or accounts to which it is to be applied.

(e) All other bills for duties, taxes, or other charges are due and payable upon the bill date appearing on the bill. A bill for increased or additional duties determined to be due upon a liquidation or reliquidation is due 15 days from the date of such liquidation or reliquidation. **[TDs 54712, 83-14, 86-178.]**

§ 24.3a Interest charges on certain bills; notice to principal and surety.

(a) *Due date of Customs bills.* Customs bills for Supplemental duties (additional duties assessed upon liquidation or reliquidation), reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) shall be due as provided for in § 24.3(e).

(b) *Assessment of interest charges*—(1) *Bills for reimbursable services and miscellaneous amounts.* If payment is not received by Customs on or before the late payment date appearing on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date.

(2) *Bills for supplemental duties.* The due date for increased or additional duties, determined to be due upon a liquidation or reliquidation, is 15 days from the date of such liquidation or reliquidation. If such duties are not paid within 30 days after their due date (the 45th day), they shall be considered delinquent and bear interest from the due date.

(c) *Interest rate and applicability.* (1) The percentage rate of interest to be charged on such bills will be based upon the semiannual rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the Customs bill and may be obtained from the IRS or the Customs National Finance Center, Indianapolis, Indiana. Customs will also publish the current interest rate in the Customs Bulletin and **Federal Register** on a semiannual basis.

(2) The percentage rate of interest applied to an overdue bill will be adjusted as necessary to reflect any change in the annual rate of interest.

(3) Interest on overdue bills will be assessed on the delinquent principal amount by 30-day periods. No interest charge will be assessed for the 30-day period in which the payment is actually received at the "Send Payment To" location designated on the bill.

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and the payment of the delinquent principal amount.

(5) The date to be used in crediting payment is the date on which the payment is received by Customs.

(d) *Notice.*—(1) *Principal.* The principal shall be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. The following elements will normally appear on the bill:

(i) Principal amount due;

(ii) Interest computation date;

(iii) Late payment date;

(iv) Accrual of interest charges if payment is not received by the late payment date;

(v) Applicable current interest rate;

(vi) Amount of interest owed;

(vii) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(viii) Transaction identification (e.g., entry number, reimbursable assignment number.)

(2) *Surety.* (i) Customs will report outstanding bills on a Formal Demand on Surety for Payment of Delinquent Amounts Due, for bills more than 30 days past due (approximately 60 days after bill due date), and every month thereafter until the bill is paid or otherwise closed.

The following elements will normally appear on the report:

(A) Principal amount due;

(B) Interest computation date;

(C) Late payment date;

(D) Accrual of interest charges if payment is not received by the late payment date;

(E) Applicable current interest rate;

(F) Amount of interest owed;

(G) Principal's name and address;

(H) Customs office where requests for administrative adjustments due to billing errors may be addressed; and

(I) Transaction identification (e.g., entry number, reimbursable assignment number).

(ii) Upon the written request of a surety, Customs will provide the surety a notice of containing the billing information at the time of the initial billing to its principal. **[TD 86-178.]**

§ 24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(a) *Application to defer.* An importer, including a transferee of alcoholic beverages in a Customs bonded warehouse who wishes to pay on a semi-monthly basis the estimated import taxes on alcoholic beverages entered, or withdrawn from warehouse, for consumption by him during such a period may apply by letter to the district director of each district in which he wishes to defer payment. If the importer desires the additional privilege of depositing estimated tax payments on an extended deferred basis, it must be specifically requested. The application must identify the ports at which the importer wishes to use the tax deferral procedure. An importer who receives approval from a district director to defer such payments may, however, continue to pay the estimated import taxes due at the time of entry, or withdrawal from warehouse, for consumption. **[TDs 55568, 56510.]**

(b) *Deferred payment periods.* A period shall commence on October 24 and run through October 31, 1965; thereafter the periods shall run from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through the last day of that month. An importer may begin the deferral of payments of estimated tax in a Customs district in the first deferral period beginning after the date of the written approval by the district director of such district. An importer may in such district use the deferred payment system until the district director advises such importer that he is no longer eligible to defer the payment of such taxes. **[TDs 55568, 56510.]**

(c) *Content of application and supporting documents.* (1) An importer must state his estimate of the largest amount of taxes to be deferred in any semimonthly period based on the largest amount of import taxes on alcoholic beverages deposited in that district in such a period during the year preceding his application. He must also identify any existing bond or bonds that he has on file in the district and the port or ports for which filed and shall submit in support of his application the approval of the surety on his bond or bonds to the use of the procedure and to the increase of such bond or bonds to such larger amount or amounts as may be found necessary by the district director. He must identify in his application all ports in the district where he intends to file entries or withdrawals from warehouse for consumption for which taxes are to be deferred. **[TD 55568.]**

(2) Each application must include a declaration in substantially the following language:

> I declare that I am not presently barred by a district director in any other district from using the deferred payment procedure for payment of estimated taxes upon imports of alcoholic beverages, and that if I am notified by a district director to such effect I shall advise the district director of all other districts where approval has been given to me to use such procedure.

(d) *Use of deferred payment method.*

(1) The district director will notify the importer, or his authorized agent if requested, of approval and will at the same time notify all ports in his district at which the procedure will be used according to the importer's application. **[TD 55568.]**

(2) An importer who has received approval to make deferred payments retains the option of deferring or depositing the estimated tax on imported alcoholic beverages until the entry or withdrawal is presented to the cashier for payment of estimated duties. At the time the importer presents his entry or withdrawal for consumption to the cashier together with the estimated duty, he must either pay the estimated tax or indicate on the entry or withdrawal that he elects to defer the tax payment. **[TD 67-33.]**

(e) *Tax deferment procedure.* If the importer elects to defer the tax payments, he shall enter on each copy of the entry or withdrawal the words "Tax Payment Deferred," adjacent to the amount shown on the documents as estimated taxes, before presentation to the cashier. **[TDs 55568, 67-33.]**

(f) *Payment procedure*—(1) *Billing.* Each importer who has deferred tax payments on imported alcoholic beverages will be billed on Customs Form 6084, U.S. Customs Service

Bill, at the end of each tax deferred period for all taxes deferred during the period. Each bill will identify each tax amount deferred and the related entry numbers. These bills must be paid in full by the last day of the next succeeding deferral period. **[TDs 55568, 56510, 67-33, 72-53, 75-278.]**

(2) *Interest on overdue accounts.* When any bill for deferred taxes is not paid within the period specified in subparagraph (f)(1) of this section, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, collected, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6621(b). **[TD 76-258.]**

(g) *Restrictions on deferring tax deposits.* An importer may not on one entry, or withdrawal from warehouse for consumption, deposit part of the estimated tax and defer the balance of the tax. The estimated tax on each entry or withdrawal must be either fully paid or deferred. **[TDs 56510, 55568, 67-33.]**

(h) *Termination of deferred payment privilege.* (1) When any bill on Customs Form 6084 for deferred taxes is not paid within the period specified in paragraph (f) of this section, a demand for payment shall be made to the surety on the importer's bond. If in the opinion of the customs officer concerned such failure to make timely payment of estimated deferred taxes warrants the withdrawal of the tax deferral privilege, he will advise the importer of the withdrawal of such privilege. In all instances of failure to pay timely the deferred taxes on alcoholic beverages withdrawn from warehouse for consumption, further withdrawals from the warehouse entry on which the tax is delinquent will be refused until payment is made of the amount delinquent. **[TDs 55568, 67-33, 75-278.]**

(2) The termination in any district of the tax deferral privilege for failure to pay timely any deferred estimated tax shall be at the discretion of the Customs officer concerned. Termination of the privilege for any other reason shall be subject to the approval of the Commissioner of Customs. Notice of termination of the tax deferral privilege in any district will be disseminated to all other Customs districts. **[TD 67-33.]**

(3) Renewal of the tax deferral privilege after it has been withdrawn in any district may be made only upon approval of the Commissioner of Customs. **[TD 67-33.]**

(i) *Duration of deferred payment privilege.* The deferred payment privileges once approved by the district director will remain in effect until terminated under the provisions of paragraph (h) or the importer or surety requests termination. **[TDs 55568, 84-213.]**

(j) *Entries for consumption or warehouse after an importer is delinquent.* An importer who is delinquent in paying deferred taxes may make entries for consumption or for warehousing, or withdrawals for consumption from warehouse entries on which no delinquency exists, upon deposit of all estimated duties or taxes. **[TD 55568.]**

(k) *Rate of tax.* The estimated taxes must be paid on the basis of the rates in effect upon entry, or withdrawal from warehouse, for consumption, unless in accordance with § 315 of the Tariff Act of 1930, as amended, another date is applicable and not on the basis of the rates of tax in effect on the date deferred payment is made. (R.S. 251, as amended, sec. 623, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624); sec. 201, 72 Stat. 1322, 1334, 1335, 68A Stat. 917; 26 U.S.C. 5007, 5054, 5061, 7805) **[TDs 55568, 72-53.]**

§ 24.5 Filing identification number.

(a) *Generally.* Each person, business firm, Government agency, or other organization shall file Customs Form 5106, Notification of Importer's Number or Application for Importer's Number, or Notice of Change of Name or Address, with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. A Customs Form 5106 shall also be filed for the ultimate consignee for which such entry is being made. Customs Form 5106 may be obtained from any Customs Office. **[TDs 67-33, 67-71, 72-106, 72-150, 74-72, 78-7.]**

(b) *Preparation of Customs Form 5106.* (1) The identification number to be used when filing Customs Form 5106 shall be:

(i) The Internal Revenue Service employer identification number, or

(ii) If no Internal Revenue Service employer identification number has been assigned, the Social Security number.

(2) If neither an Internal Revenue Service employer identification number nor a Social Security number has been assigned, the word "None" shall be written on the line provided for each of these numbers on Customs Form 5106 and the form shall be filed in duplicate.

(c) *Assignment of importer identification number.* Upon receipt of a Customs Form 5106 without an Internal Revenue Service employer identification number or a Social Security number, an importer identification number shall be assigned and entered on the Customs Form 5106 by the Customs office where the entry or request for services is received. The duplicate copy of the form shall be returned to the filing party. This identification number shall be used in all future Customs transactions when an importer number is required. If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

(d) *Optional additional identification.* Customs Form 5106 contains blocks for a two-digit suffix code which may be written in as an addition to the Internal Revenue Service employer identification number to provide optional additional identification. The two-digit suffix code may be used by a business firm having branch office operations to permit the firm to identify transactions originating in its branch offices, or by vessel owners to permit them to identify transactions associated with particular vessels. A separate Customs Form 5106 shall be required to report the specific suffix code and the name and address for each branch office or vessel to be identified. Transactions may be associated with a specific branch office or vessel by reporting the appropriate identification number, including the two-digit suffix code on Custom Form 7501 or request the services. Suffix codes may be either numeric, alphabetic, or a combination of both numeric and alphabetic, except that the letters O, Z, and I may not be used. The blocks may be left blank if the firm or vessel owner has no use for them and a "00" suffix will be automatically assigned.

(e) *Retention of importer identification number.* An importer identification number shall remain on file until 1 year from the date on which it is last used on Custom Form 7501 or a request for services. If not used for 1 year and there is no outstanding transaction to which it must be associated, the importer identification number will be removed from Customs files. To engage in future transactions described in paragraph (a) of this section, the person, business firm, Government agency, or other organization, previously covered by an importer identification number, must file another Customs Form 5106. **[TD 84–129.]**

§ 24.11 Increased or additional duties or taxes; notice to importer.

(a) Any increased or additional duties or taxes found due upon liquidation shall be billed to the importer of record or to the actual owner when there shall have been filed: **[TDs 37919, (55), 45951, 52403, 67–33.]**

(1) A declaration of the actual owner on Customs Form 3347 in accordance with § 485(d), Tariff Act of 1930, and the regulations in this part; and

(2) A bond as required by § 141.20 on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. **[TDs 53399, 54021, 73–175, 74–227, 84–213.]**

(b) In any case in which an owner's declaration has been filed timely but the bond has not been filed timely, and the district director is of the opinion that because of special circumstances the collection of the increased or additional duties should be effected under the timely owner's declaration, he shall report the facts to Headquarters, U.S. Customs Service and await instructions. (Secs. 483, 485(d), 46 Stat. 721, 724; 19 U.S.C. 1483, 1485(d)) **[TD 84–213.]**

§ 24.12 Customs fees; charges for storage.

(a) The following schedule of fees prescribed by law or hereafter in this paragraph shall be made available to the public at all Customs offices. When payment of such fee is received by a Customs employee a receipt therefor shall be issued. **[TDs 51665, 52980, 53385, 53699, 53915, 54101, 54713, 54876, 55153, 55466, 55493, 56251, 56393, 66–36, 69–266.]**

(1) RESERVED **[TD 82–204.]**

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of $10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents and furnishing an offical certification if the request is made after the entry documents are filed, plus a charge of 15 cents per page for photocopying. The fee may be revised periodically by publication of a general notice in the ***Federal Register*** and *Customs Bulletin* setting forth the revised fee. The published revised fee shall remain in effect until changed. **[TD 85–168.]**

(3) A Customs fee shall be collected for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent. This information will be furnished for a 2-month period at the fee of $1,000; a 4-month period at the fee of $1,500; or a 6-month period at the fee of $2,000. (See § 12.39a of this chapter.) **[TDs 54087, 55466, 56137.]**

(b) [Reserved]

(c) The rates charged for storage in Government-owned or rented buildings shall not be less than the charges made at the port by commercial concerns for the storage and handling of merchandise. Except as to an examination package covered by an application for an entry by appraisement, storage shall be charged on any examination package for any period it remains in the appraiser's store after 2 full working days following the day on which the permit to release or transfer was issued. As to an examination package covered by an application for an entry by appraisement, storage shall be charged for any period it remains in the appraiser's store after 2 full working days following the day of issuance to the importer of oral or written notice of the amount of duties or taxes required to be deposited or that the package is ready for delivery. If the district director finds that circumstances make it impractical to remove examination packages from the appraiser's store within the 2-day period, he may extend the period for not to exceed 3 additional working days, without storage charges. In computing the 2 working days, and any authorized extension, (1) the day on which the permit to release or transfer is issued, or the day on which the notice is issued of the amount of duties or taxes that shall be deposited or that the package is ready for delivery, whichever is applicable, (2) Saturdays, (3) Sundays, and (4) National holidays, shall be excluded. (Sec. 501, 65 Stat. 290, R.S. 2654, as amended, sec. 524, 46 Stat. 741, as amended; 19 U.S.C. 58, 1524, 31 U.S.C. 483a, 46 U.S.C. 333, 927) **[FACL 93/42; TDs 50995, 51730, 52866, 55893, 56251, 56398.]**

(d) Pursuant to the progressive clearance procedures set forth in § 122.88 of this chapter, when airlines commingle domestic (stopover) passengers who have already cleared Customs at their port of arrival and are continuing on to another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs, a progressive clearance fee of $2.00 per domestic (stopover) passenger reinspection in the U.S. will be charged by Customs to the affected airlines to offset the additional cost to Customs of reinspecting passengers who have already been cleared. The fee is in addition to any other charges currently incurred, such as overtime services, but will not apply to passengers reinspected on an overtime basis if the cost of performing such reinspection is reimbursed to Customs in accordance with 19 U.S.C. 1451. The fee will not apply to the reinspection of nonrevenue producing passengers, including but not limited to, employees of the carrier and their dependents, deadhead crew, employees of other carriers who may be assessed a service charge by the transporting carrier, and other persons to whom the carrier is authorized to provide free transportation pursuant to 14 CFR Part 233. The airline industry will be notified at least 90 days in advance of the date of any change in the amount of the fee necessitated by either an increase or decrease in costs to Customs, but no new fee shall take effect before January 1, 1986. **[TDs 85–95, 88–12.]**

§ 24.13 Car, compartment, and package seals; kind, procurement.

(a) Customs seals manufactured and supplied by approved manufacturers pursuant to § 24.13a of this chapter shall be used in sealing openings, packages, conveyances, or articles requiring the security provided by such sealing. **[TDs 48235, 54808, 55350, 55769, 67–281, 68–136.]**

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the U.S. shall be stamped "U.S. Customs in Bond." Green seals used by Canadian Customs officer to seal railroad cars moving in bond through the U.S. between Canadian ports as provided in § 123.33 of this chapter shall be stamped [Can. Customs]

[U.S. Transit], and uncolored seals used to seal containers of commercial traveler's samples transiting the U.S. as provided by § 123.52 of this chapter shall be stamped "Canada-U.S. Customs." Blue in-transit seals used to seal merchandise transiting foreign territory or waters between ports in the U.S. as provided in § 123.24 of this chapter shall be stamped "U.S. Customs In-Transit." Yellow in-transit seals used on rail shipments of merchandise and on containers of commercial traveler's samples transiting Canada between U.S. ports as provided in §§ 123.24 and 123.51 of this chapter shall be stamped [U.S. Customs]

[Can. Transit] for use on railroad cars, and "U.S.-Canada Customs" for use on samples. Uncolored seals used for Customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with § 553, Tariff Act of 1930, as amended, or (3) shipping in transit shall be stamped "U.S. Customs." All seals (except uncolored in-transit seals on containers of commercial traveler's samples and seals for use on airline liquor kits) shall be stamped with the name of the port for which they are ordered. Each strap seal shall be stamped with a serial number. Each automatic metal seal shall be stamped with a symbol number and, when required, with a serial number. **[TDs 50999, 52984, 53057, 53690, 54113, 55203, 67-281, 68-136, 70-121, 75-65, 77-30, 77-160.]**

(c) *Purchase of seals.* Bonded carriers of merchandise, commercial associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, a foreign trade zone operator and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. The order shall be prepared by the purchaser and, except as hereinafter noted, shall be confined to seals for use at one port and shall specify the kind and quantity of seals desired, the name of the port at which they are to be used, and the name and address of the consignee to whom they are to be shipped. Seals for use on airline liquor kits need not specify the name of the port at which they are to be used, and orders for such seals need not be confined to seals for use at one port. Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. An order for green or uncolored in-transit seals shall be submitted to the office of the Director of Customs-Excise Inspection, Ottowa, Canada, for approval and forwarding to the manufacturer. An order for green strap-in bond seals for use on railroad cars must stipulate that the seals are to be consigned to the collector of customs and excise in Canada at the port indicated on the seals for entry purposes and storage under Customs lock and key. **[TDs 52984, 53057, 53690, 54113, 54808, 55203, 67-281, 68-136, 75-65, 81-185, 82-204, 86-16.]**

(d) The manufacturer shall ship the seals to the consignee named in the order and shall advise the district director for the Customs district to which the seals are shipped as to the kind and quantity of seals shipped, the name of the port (where required), serial numbers, and symbol number (where required) stamped thereon, the name and address of the consignee, and the date of shipment. **[TDs 54808, 68-136, 75-65, 81-185.]**

(e) [Reserved]

(f) *District director approval required.* In-bond seals may be purchased only by a foreign trade zone operator, a Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with § 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the district director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by district directors for authorized use without charge. In-bond and in-transit seals sold by district directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased. (R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).) **[TDs 50053, 50999, 54752, 54808, 55203, 77-30, 82-204, 86-16.]**

§ 24.13a Car, compartment, and package seals; and fastenings; standards; acceptance by Customs.

(a) *General standards.* The seals and fastenings, together, shall

(1) Be strong and durable;

(2) Be capable of being affixed easily and quickly;

(3) Be capable of being checked readily and identified by unique marks (such as a logotype) and numbers;

(4) Not permit removal or undoing without breaking, or tampering without leaving traces;

(5) Not permit use more than once; and

(6) Be made as difficult as possible to copy or counterfeit.

(b) *Seal specifications.* (1) The shape and size of the seal shall be such that any identifying marks are readily legible.

(2) Each eyelet in a seal shall be of a size corresponding to that of the fastening used, and shall be positioned so that the fastening will be held firmly in place when the seal is closed.

(3) The material used shall be sufficiently strong to prevent accidental breakage, early deterioration (due to weather conditions, chemical action, etc.) or undetectable tampering under normal usage.

(4) The material used shall be selected with reference to the sealing system used.

(c) *Fastening specifications.* (1) The fastening shall be strong and durable and resistant to weather and corrosion.

(2) The length of the fastening used shall not enable a sealed aperture to be opened or partly opened without the seal or fastening being broken or otherwise showing obvious damage.

(3) The material used shall be selected with reference to the sealing system used.

(d) *Identification marks.* (1) If the seal is to be purchased and used by U.S. Customs, the seal or fastening, as appropriate, shall be marked to show that it is a U.S. Customs seal by application of the words "U.S. Customs" and a unique identification number on the seal.

(2) If the seal is to be used by private industry (i.e., a shipper, manufacturer, or carrier), it must be clearly and legibly marked with a unique company name (or logo-type) and identification number.

(e) *Customs acceptance.* Seals will be considered as acceptable for use and/or purchase by U.S. Customs as soon as the manufacturer attests that the seals have been tested and meet or exceed the standards provided in paragraphs (a) through (d) of this section, and will continue to be considered acceptable until such time as it is demonstrated that they do not meet the standards. A manufacturer may attest to the qualification of a specific seal, or to an entire product line of seals as of a certain date. Any addition of a seal to a group of seals attested to as a group would require specific acceptance of the seal by Customs.

(f) *Testing.* All testing of seals deemed necessary before Customs acceptance will be done by the manufacturer or by a private laboratory, and not by Customs. However, Customs reserves the right to test, or to have tested, seals that have been accepted by Customs.

(g) *Records.* The manufacturer's attestation that a seal meets or exceeds the standards specified in this section and, if deemed necessary by Customs, the seal test record shall be sent to the Director, Office of Inspection, Cargo Processing Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. **[TDs 68–136, 81–185.]**

§ 24.14 Salable Customs forms.

(a) Customs forms for sale to the general public shall be designated by the Commissioner of Customs, or his delegate. Customs forms which are designated as salable shall meet the following conditions: (1) The form is distributed to private parties for use in completing customs transactions; (2) the quantity used nationwide annually is sufficient to justify the administrative costs involved in selling the form and accounting for the collections involved therein, or the form is primarily for the use of a special group; (3) distribution is or can generally be made in lots of 100 or more; (4) the form is normally distributed to commercial concerns (customhouse brokers, freight forwarders, vessel agents, carriers, regular commercial importers, etc.) rather than to or for the use of individuals or others (tourists, churches, schools, occasional importers, etc.) for noncommercial purposes. **[TDs 44695, 52732, 54198, 55238, 75–132.]**

(b) The price of each salable Customs form shall be established by the Commissioner of Customs, or his delegate, and shall be adjusted periodically as the varying costs of printing and distribution require. A list of salable customs forms showing the price at which each is sold shall be prominently posted in each customhouse in a location accessible to the general public. **[TD 75–132.]**

(c) Customs forms for sale to the general public, except unusually large or otherwise unsuitable forms, shall normally be prepared in units containing 100 copies. If a completely prepared bill or receipt is presented by the purchaser at the time of the purchase, the district director's paid stamp shall be impressed thereon; otherwise, no receipt shall be given. (Sec. 1, 37 Stat. 434; 19 U.S.C. 1)

§ 24.16 Overtime services; overtime compensation; rate of compensation.

(a) *General.* Customs services for which overtime compensation is provided for by § 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), or § 451, Tariff Act of 1930, as amended (19 U.S.C. 1451), shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said § 451, or § 53 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741). Reimbursements of overtime compensation shall be collected by the district director from the applicants for the services. Customs employees shall not receive overtime compensation for services performed on regular tours of duty at night, but no regular tour of duty shall embrace any part of a Sunday or holiday if the services performed are such that extra compensation would be payable if performed at the request of a private interest. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a timely application therefor during regular hours of business when the need for the services can reasonably by foreseen, nor in any case until the maximum probable reimbursement is adequately secured. **[257 US 506; TDs 38290, 39331, 49117, 49658, 53626; 51149, 77–35.]**

(b) *Night, Sunday, and holiday defined.* For the purposes of this section the word "night" shall mean the time between 5 p.m. of any day and 8 a.m. of the following day, or between the corresponding hours at ports or stations where regular hours for the transaction of the general class of Customs business involved other than those from 8 a.m. to 5 p.m. have been established to agree with local prevailing working hours, but shall not include any such time within the 24 hours of a Sunday or holiday. The night hours at the end of the regular workday immediately preceding a Sunday or holiday and the night hours at the beginning of the next regular workday shall be considered for the purposes of this section as parts of a single night. For such purpose the term "holiday" shall include only days on which Customs employees generally are not required to work and which are usually observed as national holidays. The time accounted for as overtime shall be computed on the basis of the regular hours for the performance of the particular work of the assignment, even though such hours differ from the regular working hours of the employee assigned, but no extra compensation shall be paid pursuant to this section for any services performed by an employee at his regular post or elsewhere during a regular tour of duty of such employee. For example: At a port where the regular hours of business have been fixed at 8 a.m. to 5 p.m. for the inside force and 7 a.m. to 4 p.m. for the outside force, a clerk whose regular working hours are 8 a.m. to 5 p.m. is not entitled to reimbursable extra compensation if assigned to inspectional work from 7 a.m. to 8 a.m. on a week day, since he works within the regular hours for the service to which he is assigned. **[TDs 51330, 89–1.]**

(c) *Application and bond.* (1) Except as provided for in subparagraphs (2) and (4) of this paragraph, an application for services of Customs employees at night or on a Sunday or holiday, Customs Form 3171, supported by the required

best copy available

cash deposit or bond, shall be filed in the office of the district director of Customs before the assignment of such employees for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the district director or his authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs employees, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement shall be on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, Part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73) and in an amount to be fixed by the district director, unless another bond containing a provision to secure reimbursement is on file. A bond given on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, Part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73] to secure the payment of overtime services rendered private aircraft and private vessels shall be taken without surety or cash deposit in lieu of surety, and the bond shall be modified to so indicate. **[TDs 51740, 53626, 55386, 68-247, 70-201, 77-35, 84-213, 85-123.]**

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the district director of Customs may designate a Customs employee to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond. In each such case the assignment to perform services shall be conditional upon the receipt of the appropriate application and security. Where the security is a cash deposit, the receipt may be properly inscribed to make it serve as a combined receipt for cash deposit in lieu of bond and request for overtime services, in lieu of filing a request for overtime services on Customs Form 3171. **[TDs 56106, 67-33, 68-247.]**

Request for Overtime Services

Permit Number _____

I hereby request overtime services on _____, 19____, at __ a.m., p.m., in connection with the entry of my aircraft (vessel).

_____

(Pilot, Owner, or Person in Charge)

(3) An application on Customs Form 3171 for overtime services of Customs employees, when supported by the required cash deposit or a continuous bond, may be granted for a period not longer than for 1 year. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper Customs officer will be timely notified during official hours in advance of the services requested as to the exact times that the services will be needed. **[TDs 68-247, 77-35, 84-213.]**

(4) Inspectional services will be provided to owners or operators of aircraft without charge for overtime on Sundays and holidays between the hours of 8:00 a.m. and 5:00 p.m. Applications for inspectional services for aircraft during those hours shall be filed as set forth in subparagraph (1) of this paragraph, but without cash deposit or bond. **[TD 77-35.]**

(d) *Assignment.* Customs employees may be ordered to report for any overtime duty sufficiently in advance of the time specified by the applicant to avoid unnecessary delay, but in no case more than 1 hour in advance of the time so specified unless the specified time is subject to change without reasonable notice as in the case of some aircraft arrivals. If no time can be specified for the services to begin, the employees required and available shall be assigned to the overtime duty as soon as practicable. Customs employees shall not be deemed available to perform reimbursable overtime services at night unless the total time of service, including waiting time, will be at least one hour, but nothing in this section shall prohibit the district director or other administrative officer from requiring an employee to perform, before he leaves his duty status and without extra compensation under the act of February 13, 1911, as amended, any work which is pending at the beginning of the night and can be completed in less than 1 hour. No Customs employee shall be assigned on a weekday, or for more than an aggregate of 8 hours on a Sunday or holiday, to any overtime service for which nonreimbursable extra compensation is payable, except under special authorization from the Commissioner of Customs.

(e) *Nonperformance of requested services.* If services which have been requested and for which employees have reported are not performed by reason of circumstances beyond the control of the employees concerned, extra compensation shall be paid and collected on the same basis as though the services had actually been performed during the period between the time the employees were ordered to report for duty and did so report and the time they were notified that their services would not be required, and in any case as though actual performance had continued for at least 1 hour.

(f) *Broken periods.* When overtime services at night or on a Sunday or holiday are rendered in broken periods the actual time each assignment began and ended shall be reported. Overtime services rendered in such broken periods shall be treated as though the services had been continuous except when the total of the compensation computed separately for each such period in accordance with the provisions of paragraphs (g) and (h) of this section is less than when computed as though the services had been considered continuous. For purposes of computing compensation, each time an employee is assigned and reports for overtime duty on a weekday or on a Sunday or holiday constitutes a separate broken period even though no services, or services of less than 1 hour, are actually rendered on such assignment. In no case shall any employee be entitled to receive more than 2½ days' pay by reason of the fact that he is given two or more assignments during one night. **[TD 70-253.]**

(g) *Rate for night service.* The reasonable rate of extra compensation for authorized overtime services performed by Customs employees at night on any weekday is hereby fixed at one-half of the gross daily rate of the regular pay of the employee who performs the service for each 2 hours of compensable time, any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours. The compensable time shall be the period between the beginning of the night and the conclusion of the services if the employee is assigned and reports for duty before the expiration of the first 4 hours of the night; the period between the time the employee is assigned and reports for duty and the conclusion of the services, plus 4 hours, if the time of assignment is after the expiration of the first 4 and before the beginning of the last 2 hours of the night; or 2 hours if the employee is

assigned and reports for duty 2 hours or less before the end of the night. However, if an employee performs Sunday or holiday services which are in continuation of an assignment to overtime services begun during the last 2 night hours at the end of the regular workday preceding such Sunday or holiday, the compensable time for the overtime services preceding the Sunday or holiday shall be 2 hours; or if an employee performs overtime services during the night hours at the beginning of the next regular workday following a Sunday or holiday which overtime services are in continuation of an assignment begun on the Sunday or holiday immediately preceding such regular workday, the compensable time for the overtime services following such Sunday or holiday shall be the period between midnight of such Sunday or holiday and the conclusion of the overtime services. The compensable time for overtime service performed by a customs employee assigned to a regular tour of duty covering any part of a night shall be computed in accordance with this night rate as though the beginning of the regular tour of duty of such employee marked the end of a night period and the close of such tour marked the beginning of another night period, but extra compensation is not payable in accordance with this section for overtime services performed by any Customs employee on a regular workday during other than the night hours of the port or station. The total extra compensation paid pursuant to this section to a Customs employee for overtime services performed during one night shall not exceed 2½ times the gross daily rate of his regular pay. **[TD 52903.]**

(h) *Rate for Sunday or holiday service.* The reasonable rate of extra compensation for Sunday or holiday services is hereby fixed at twice the gross daily rate of regular pay of the employee who performs the service for any and all services totaling an aggregate of not more than 8 hours during the 24 hours from midnight to midnight of the Sunday or holiday, including actual waiting time and time required for travel between posts of duty but not including any periods for meals or other time not spent at the post of duty. This rate shall apply regardless of the length of time served within the aggregate of 8 hours, whether it is served continuously or in broken periods, and whether it is served for one or more applicants. Services in excess of an aggregate of 8 hours performed during the 24 hours of a Sunday or holiday shall be compensated on the same basis as overtime services performed at night on a weekday, the time between the completion of the aggregate of 8 hours and midnight being considered as the hours of a night.

(i) *Part-time employees.* The extra compensation for overtime services performed by a permanent part-time employee at night or on a Sunday or holiday shall be computed on the basis of the gross daily rate of regular pay the part-time employee would receive for full-time service in the position held by him. Customs employees who are paid on a per-diem-when-employed basis shall be paid the overtime rate but not the per-diem rate when assigned to perform overtime services on a Sunday or holiday.

(j) *Proration of charges*—(1) *General.* If services are performed for two or more applicants during one continuous tour of overtime duty, the charge for the extra compensation earned shall be prorated equitably according to the time attributed to the services performed for each applicant. For the purpose of this paragraph the Government shall be considered the applicant for nonreimbursable overtime services. **[TD 67-166.]**

(2) *Aircraft.* When any services performed by Customs employees for two or more applicants during the 24-hour period of a Sunday or holiday or during the night hours of 5 p.m. of any day to 8 a.m. of the following day cannot be readily attributed on a time basis to specific aircraft in the judgment of the district director having Customs supervision of the airport, the total charge of the overtime compensation for such services during the entire period of the Sunday, holiday, or night hours shall be prorated to the aircraft receiving such services during each such period on the following basis:

(i) Five percent of such total Customs overtime charge for the period shall be distributed equally among the operators of the aircraft.

(ii) Ten percent of such total Customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of entrances and clearances made by each aircraft operator requiring Customs service bears to the total number of entrances and clearances serviced during the period.

(iii) Eighty-five percent of such total Customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of passengers and/or crew serviced for each aircraft operator bears to the total number of passengers and/or crew serviced during the period.

This proration formula shall apply only to overtime services rendered aircraft carrying cargo and/or passengers for hire and in no case shall the prorated charge to an aircraft operator be more than the charge would have been had the services been rendered as a separate assignment for the aircraft operator.

(k) *Participation in overtime work.* In general, services for which extra compensation is payable in accordance with this section, or for which reimbursement is required in accordance with § 24.17, shall be performed by employees who are regularly assigned to perform the same class of work during their regular tours of duty, but when the district director or other administrative field officer concerned finds that the needs of the service so require he is hereby authorized to assign any other available and competent employee to perform such services and such employees while so assigned shall be deemed acting inspectors, acting Customs warehouse officers, etc., as the case may be. (Sec. 5, 36 Stat. 901, as amended, secs. 450, 451, 452, 46 Stat. 715, as amended, secs. 6, 623, 49 Stat. 1385, as amended; 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623, 46 U.S.C. 382b)

§ 24.17 Other services of officers; reimbursable.

(a) Amounts of compensation and expenses chargeable to parties-in-interest in connection with services rendered by Customs officers or employees during regular hours of duty or on Customs overtime assignments (19 U.S.C. 267, 1451), under one or more of the following circumstances shall be collected from such parties-in-interest and deposited by district directors as repayments to the appropriation from which paid. **[TDs 49658, 51334, 52563, 52979, 53399, 54318, 54662, 54876, 55196, 56209.]**

(1) When a Customs officer or employee is assigned on board a vessel or vehicle under authority of § 457, Tariff Act of 1930, to protect the revenue, the owner or master of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of

such officer or employee from the time he leaves his official station until he returns thereto.

(2) When a Customs officer or employee is assigned on board a vessel under authority of § 458, Tariff Act of 1930, to supervise the unlading of such vessel, the master or owner of such vessel shall be charged the full compensation of such officer or employee for every day consumed in unlading after the expiration of 25 days after the date of the vessel's entry.

(3) When a Customs officer or employee is assigned under authority of § 304, Tariff Act of 1930, as amended, to supervise the exportation, destruction, or marking to exempt articles from the duty provided for in such section, the importer of such merchandise shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(4) When a Customs officer or employee is assigned pursuant to § 101.4 of this chapter to a Customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns. When a Customs officer or employee is so assigned to render service in connection with the entry or delivery of merchandise only, the private interest shall be charged only for the authorized travel and subsistence expenses incurred by such officer or employee from the time he leaves his official station until he returns thereto, except that no collection need be made if the total amount chargeable against one importer for one day amounts to less than 50 cents (see § 101.4(b) of this chapter). Where the amount chargeable is 50 cents or more, but less than $1, a minimum charge of $1 shall be made. **[TDs 51334, 54876, 77-241.]**

(5) When a Customs officer or employee is assigned under authority of § 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or to supervise the unlading of cargo, the private interest shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(6) [Reserved]

(7) When a Customs officer or employee is assigned on any vessel or vehicle, under authority of § 456, Tariff Act of 1930, while proceeding from one port to another, the master or owner of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto, or, in lieu of such expenses, the master or owner may furnish such officer or employee the accommodations usually supplied to passengers. **[TD 52563.]**

(8) When a Customs officer or employee is assigned under authority of § 562, Tariff Act of 1930, as amended, to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest. A customs officer so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse. **[TD 89-1.]**

(9) When a Customs officer or employee is assigned to supervise the destruction of merchandise pursuant to § 557(c), Tariff Act of 1930, as amended, at a place where a Customs employee is not regularly assigned, the full compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest. **[TD 52979.]**

(10) When a Customs officer or employee is assigned to supervise the labeling of imported merchandise in accordance with the provisions of §§ 11.12(b), 11.12a(b), 11.12b(b) of the regulations of this chapter or the removal or obliteration of prohibited markings and trade marks from merchandise which has been detained or seized in accordance with the provisions of §§ 11.13(c) and 11.17(b) of the regulations of this chapter or to supervise the exportation or destruction of any such merchandise, the compensation and expenses of such Customs officer or employee shall be reimbursed to the Government by the party in interest. **[TDs 54318, 56140.]**

(11) When a Customs officer or employee is assigned to supervise examination, sampling, weighing, repacking, segregation, or other operation on merchandise in accordance with §§ 151.4, 151.5, 158.11, 158.14, and 158.42 of this chapter, the compensation and other expenses of such officer or employee shall be reimbursed to the Government by the party-in-interest except when a warehouse proprietor is liable therefor. **[TDs 54662, 55196, 72-258, 73-175.]**

(b) When a Customs officer or employee is assigned to render services the nature of which is such that the private interest is required to reimburse the Government for his compensation and on the same assignment performs services for which compensation is not reimbursable, a charge shall be made to the private interest for the full compensation of the Customs employee unless the time devoted to each class of service can be clearly segregated.

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses of a Customs employee within the port limits and any authorized travel expenses of a Customs employee, including per diem, when the services are performed outside the port limits irrespective of whether the services are performed during a regular tour of duty or during a Customs overtime assignment. No charge shall be made for transportation expenses when a Customs employee is reporting to as a first daily assignment, or leaving from as a last daily assignment, a place within or outside the port limits where he is assigned to a regular tour of duty. No charge shall be made for transportation expenses within the port limits or travel expenses, including per diem, outside the port limits in connection with a Customs overtime assignment for which reimbursement of expenses is not covered by this section. **[TDs 54486, 54876, 55222, 56209.]**

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319

Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2.319/1.696=137 percent.

(1) The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.*), and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges. **[TD 82-204.]**

(e) The reimbursable charge for customs overtime compensation shall be computed in accordance with § 24.16.

(f) *Medicare Compensation Costs.* In addition to other expenses and compensation chargeable to parties-in-interest as set forth in this section, such persons shall also be required to reimburse Customs in the amount of 1.35 percent of the reimbursable compensation expenses incurred. Such payment will reimburse Customs for its share of Medicare costs. **[TDs 84-41, 84-147, 86-118.]** (Sec. 5, 36 Stat. 901, as amended, secs. 450, 451, 452, 456, 524, 557, 562, 46 Stat. 715, as amended, 716, 741, as amended, 744, as amended, 745, as amended, sec. 1, 24 Stat. 79, as amended, sec. 6, 49 Stat. 1385, as amended; 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562, 46 U.S.C. 331, 382b) **[TD 56209.]**

§ 24.18 Preclearance of air travelers in a foreign country; reimbursable cost.

(a) Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where U.S. Customs personnel are stationed for that purpose. **[TD 70-34.]**

(b) At the request of an airline, travelers on a direct flight to the U.S. from a foreign place described in paragraph (a) of this section may be precleared prior to departure from such place. A charge based on the excess cost to Customs of providing preclearance services as defined in paragraph (c) of this section shall be made to the airline.

(c) The reimbursable excess cost is the difference between (1) the cost of examining and inspecting air travelers and their baggage upon arrival in the U.S. assuming no preclearance was provided, and (2) the cost of providing preclearance for air travelers at the place of departure. Such excess cost shall include all items attributable to the preclearance operation. This does not include the salary of personnel regularly assigned to a preclearance station other than approved salary differentials related to the foreign assignment and the salary of relief details made necessary by reason of the nature of the operation. In addition, such cost shall include the following allowances and expenses:

(1) Housing allowances;

(2) Post of duty allowances;

(3) Education allowances;

(4) Transportation cost incident to the assignment to the foreign station and return, including transportation of family and household effects;

(5) Home leave and associated transportation costs; and

(6) Equipment, supplies and administrative costs including costs of supervising the preclearance installation.

(d) The reimbursable excess cost described in paragraph (c) of this section shall be determined for each preclearance installation. On the basis of the excess cost figure for each installation, the excess cost of providing preclearance service for a biweekly pay period shall be determined. The initial schedule of biweekly excess cost will be based on the actual excess cost for fiscal year 1969. Thereafter, a quarterly (ending with the pay period closely corresponding to June 30, September 30, December 31, and March 31) cost analysis will be conducted and the schedule of biweekly excess costs will be adjusted so that the current biweekly excess cost schedule will reflect the actual excess costs of the previous quarter. Such schedules of biweekly costs for each installation shall be published in the ***Federal Register.*** The biweekly excess cost in effect at an installation at the time the charge is made shall

be used in calculating the prorated charge for preclearance service for each airline in accordance with paragraph (e) of this section.

(e) The charge to each airline for preclearance service shall be its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the billing period on the following basis:

(1) Five percent shall be distributed equally among the airlines serviced.

(2) Ten percent shall be distributed proportionately as the number of clearances serviced bears to the total number of clearances.

(3) Eighty-five percent shall be distributed proportionately as the number of passengers and/or crew serviced for each airline bears to the total number of passengers and/or crew serviced.

(f) Customs services for which overtime compensation is provided for by § 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), and the expenses recovered thereunder are governed by § 24.16 and are in no way affected by this section. (63 Stat. 290; 31 U.S.C. 483a) (80 Stat. 379; 5 U.S.C. 301) **[TD 85-123.]**

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility in § 19.5;

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a)(2);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter. **[TD 84-231.]**

§ 24.22 Fees for certain services.

(a) *Definitions.* For purposes of this section:

(1) The word "vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft or any ferry.

(2) The word "arrival" means arrival at a port of entry in the customs territory of the U.S., or any place served by a port of entry.

(3) The words "calendar year" mean the period from January 1 to December 31 of any particular year.

(b) *Fee for arrival of a commercial vessel of 100 net tons or more.* (1) The master, licensed deck officer, or purser of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this Chapter, and any U.S.-flag vessel proceeding coastwise under § 4.85 of this Chapter shall, upon arrival, proceed to Customs and tender a processing fee in the amount of $397 for the services provided. The fee shall be collected at each port of arrival.

(2) *Exceptions.* Foreign passenger vessels making at least three trips a week from a port in the U.S. to the high seas and returning to the same U.S. port, not having touched any foreign port or place, shall be exempt from the payment of an arrival fee, even though formal entry is still required.

(c) *Fee for arrival of a commercial truck.*—(1) *Commercial truck defined.* For the purposes of this paragraph, a commercial truck is defined as a self-propelled vehicle designed and used for the transportation of commercial merchandise, or the transportation of non-commercial merchandise on a for-hire basis. Empty trucks and truck cabs without trailers fitting this description are also included.

(2) *Fee.* The driver or other person in charge of a commercial truck or truck cab entering the customs territory of the U.S. shall, upon arrival at a port of entry in the customs territory of the U.S., proceed to Customs and tender the sum of $5 for the services provided.

(3) *Prepayment.* The owner or operator of a commercial truck may apply for a prepaid permit for a calendar year upon payment of $100. The following information, together with the payment, shall be provided:

(i) Vehicle make, model, and model year.

(ii) Vehicle Identification Number (VIN).

(iii) License numbers issued by state, province, or county.

(iv) Owner's name and address.

(4) Payment may be made to the Customs officer at the port of entry, or in accordance with the provision of paragraph (i) of this section. The prepaid permit will be in the form of a decal to be placed in the lower left hand corner of the truck windshield, prior to first clearance through Customs for any calendar year. No credit toward the annual fee shall be given for payments made at individual crossings.

(d) *Fee for arrival of each railroad car.*—(1) *Fee.* A fee of $5 shall be charged for each railroad car, whether passenger or freight, loaded or empty, upon each arrival at a port of entry in the customs territory of the U.S. The railroad company receiving a rail car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the U.S., shall be responsible for payment of the fee. No fee shall be required for locomotives and cabooses, but the $5 fee shall be assessed for empty railroad cars which are dropped from an in-transit train in the U.S. and are placed in the railroad interchange system.

(2) *Prepayment.* Railroad companies may, at their option, prepay a $100 calendar year fee for each railroad car. This payment shall be remitted in accordance with the provision of paragraph (i) of this section. No credit will be given for payments made toward the annual fee at individual crossings.

(3) *Payment and monthly statement procedures.* (i) The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), shall file monthly statements with the Director, National Finance Center, within 60 days after the end of each calendar month. Each statement shall indicate:

(A) The number of railroad cars entering the customs territory of the U.S. during the relevant period;

(B) The number of those railroad cars pulled by each carrier; and

(C) The total monthly processing fee due from each carrier.

(ii) The individual carriers shall remit the fees calculated by AAR, and AMTRAK shall remit the fees it has calculated, within 60 days after the end of each calendar month in which railroad cars entered the customs territory of the U.S. The submission of monthly statements and the remission of fees shall be in accord with the procedures specified in paragraph (i) of this section.

(4) *Maintenance of records.* The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK) shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for period of 3 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company responsible for making fee payments shall advise the Director, National Finance Center, of the name, address, and telephone number of a responsible officer who shall be able to verify any statements or records required to be filed or maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. The information required to be submitted under this subparagraph shall be in accord with the procedures set forth in paragraph (i) of this section.

(5) *Exemptions.* No fee shall be collected under this paragraph for Customs services provided in connection with the arrival of any railroad car that is part of a train whose journey originates and terminates in the same country, if—

(i) The car is part of the train when the train departs the U.S.; and

(ii) No passengers board or disembark from the car, and no cargo is loaded or unloaded from the car, while the train is within any country other than the country in which the train originates and terminates.

(e) *Fee for arrival of a private vessel or private aircraft.* Except as otherwise provided in this paragraph, the master or other person in charge of a private vessel or aircraft shall, upon first arrival at a port in the customs territory of the U.S. in any calendar year, proceed to Customs and tender the sum of $25 for the services provided. Only one $25 fee shall be collected in connection with arrivals of each private vessel or private aircraft in a calendar year. The $25 fee may be prepaid to Customs. A receipt for the payment of the fee shall be provided by Customs to the master or other person in charge of the private vessel or private aircraft and shall be retained as proof of payment. The proof of payment shall be presented to Customs upon each arrival of the vessel or aircraft. The requirements of this paragraph shall not apply to private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to Customs, nor to private pleasure vessels granted a cruising license under § 4.94 of this chapter, during the pendency of that license. The fee specified in this paragraph shall be in addition to any overtime charges.

(f) *Fee for dutiable mail.* The addressee of each item of dutiable mail for which a Customs officer prepares documentation shall be assessed a processing fee in the amount of $5. When the merchandise is delivered by the Postal Service, the fee shall be shown as a separate item on the entry and collected at the time of delivery of the shipment along with any duty and taxes due. When Customs collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*—(1) *Fee.* Except as set forth in this paragraph, each passenger requiring Customs processing who is aboard a commercial vessel or commercial aircraft which arrives in the customs territory of the U.S. from a place outside thereof, shall be assessed a fee in the amount of $5 for the processing.

(2) *Exceptions.* The fee set forth in paragraph (g)(1) of this section shall not be assessed for the following categories of arriving passengers:

(i) Persons whose journey originates in Canada, Mexico, a territory or possession of the U.S., or any adjacent island. The U.S. territories and possessions include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.

(ii) Crew members and persons directly connected with the operation, navigation, ownership, or business of the vessel or aircraft;

(iii) Diplomats, except for U.S. diplomats, who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of such listing an individual diplomat may present appropriate proof of

diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(iv) Persons departing and returning to the U.S. without having touched a foreign port or place;

(v) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the U.S. or a foreign government, including any agency or political subdivision thereof, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/Customs Military Inspection Program; and

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport.

(vii) Persons transiting the U.S. and not processed by Customs.

(3) The fees specified in this paragraph shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the U.S. which originates in a location other than as specified in paragraph (g)(2) of this section.

(ii) When through tickets or travel documents are issued in an exempt location indicating an arrival in the U.S. following a stopover (layover) in a location other than as specified in paragraph (g)(2)(i) of this section; and

(iii) When passengers arrive in the U.S. in transit from a non-exempt location and are processed by Customs.

(4) *Collection of fees.* Carriers issuing tickets or travel documents on or after July 7, 1986, are responsible for the collection of the passenger processing fee from all passengers transported into the U.S. for whom the fee applies. The ticket or travel document shall be marked to indicate that the required fee has been collected from the passenger. If the ticket is not so marked and was issued in a foreign country, the fee shall be collected and remitted by the departing carrier upon departure of the passenger from the U.S. If collected at time of departure from the U.S., the carrier making the collection shall issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets will collect and remit the processing fee to Customs in the same manner as the carrier.

(5) *Payment and quarterly statement procedures.* Payment must be made no later than 31 days after the close of the calendar quarter in which the fees are collected. If the issuing carrier has not collected the required fee from passengers, the person who first collects that fee shall remit it to Customs.

(i) Fee payments shall be accompanied by a statement which includes the following information:

(A) Name and address of the party remitting payment;

(B) Taxpayer Identification number of the party remitting payment; and

(C) Calendar quarter covered by the payment.

(ii) Fee payments shall be at the location and in accordance with the procedures specified in paragraph (i) of this section.

(6) Carriers contracting with a U.S.-based tour wholesaler are responsible for notifying Customs of all flights or voyages contracted, the number of spaces contracted for, and the name, address and taxpayer identification number of the tour wholesaler all within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(7) *Maintenance of records.* Each airline and vessel company affected by this paragraph shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee calculation. The affected companies shall advise the Director, National Finance Center, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. Required information shall be submitted as set forth in paragraph (i) of this section.

(8) *Limitation on charges.* Other than the $5 processing fee for arriving passengers specified in this paragraph, arriving scheduled airline flights as defined in § 6.1(f) of this chapter and operating within the requirements of § 6.2 of this chapter, shall be provided inspectional services for their passengers at no additional cost.

(h) *Annual customs broker fee.* Customs brokers are subject to an annual fee for each permit held by an individual, partnership, association, or corporate broker as specified in § 111.96 of this chapter.

(i) *Fee remittance and information submission procedures.*—(1) *Fee remittance.* All fees required to be remitted pursuant to this section shall be payable by check or money order to the U.S. Customs Service, in the amounts prescribed in these regulations. Unless otherwise provided for in this section, all fee remittances required by this section shall be mailed to: U.S. Customs Service, P.O. Box 198151, Atlanta, Georgia 30384. Each payment shall be accompanied by information sufficient to identify the person or organization remitting the fee, a brief description of the type of fee being remitted (whether railroad, commercial airline passenger, or other), and the time period to which the payment applies.

(2) *Information submission.* Unless otherwise specified, all information, summaries, reports, or other data required to be submitted to Customs pursuant to this section shall be mailed to the Director, National Finance Center, Attn: Revenue Accounting, P.O. Box 68901, Indianapolis, Indiana 46278. **[TD 86-109.]**

§ 24.23 Ad valorem fee.

(a) *Fee.* Except for those types listed in paragraph (b), merchandise formally entered or withdrawn from a warehouse, for consumption, is subject to the payment to Customs of an ad valorem fee of 0.22 percent from December 1, 1986, through September 30, 1987. For fiscal year beginning October 1, 1987, the fee will be the lesser of 0.17 percent ad valorem or an ad valorem rate provided by the Secretary of the Treasury pursuant to section 8101(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). The fee for the fiscal year beginning on October 1, 1987, will be published in the **Federal Register.** The fee shall be based on the value of the merchandise as determined under section 402, Tariff Act of 1930 (19 U.S.C. 1401a).

(b) *Exemptions.* The following articles are not subject to the ad valorem fee:

(1) Articles provided for in schedule 8, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

(2) Products of insular possessions of the U.S. (General Headnote 3(a), TSUS.)

(3) Products of beneficiary countries of the Caribbean Basin Economic Recovery Act. (General Headnote 3(e)(vii), TSUS.)

(4) Products of least developed developing countries. (General Headnote 3(e)(vi), TSUS.)

(5) Goods originating in Canada pursuant to General Note 3(c), HTSUS, according to the following schedule:

(i) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1990, the user fee shall be 80 percent of the user fee otherwise applicable on that date;

(ii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1991, the user fee shall be 60 percent of the user fee otherwise applicable on that date;

(iii) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1992, the user fee shall be 40 percent of the user fee otherwise applicable on that date;

(iv) With respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1993, the user fee shall be 20 percent of the user fee otherwise applicable on that date;

(v) With respect to goods entered or withdrawn from warehouse on or after January 1, 1994, there shall be no Customs user fee.

(c) *Payment.* The fee shall be due and payable to Customs by the importer of record of the merchandise at the time of deposit of estimated duties. **[TDs 86-205, 89-3.]**

§ 24.24 Harbor maintenance fee.

(a) *Fee.* Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.04 percent (.0004) of its value if the loading or unloading occurs at a port within the definition of this section, unless exempt under paragraph (c) of this section or one of the special rules in paragraph (d) of this section is applicable.

(b) *Definitions.* For the purpose of this section:

(1) *Port* means any channel or harbor (or component thereof) in the customs territory of the United States which is not an inland waterway and is open to public navigation and at which Federal funds have been used since 1977 for construction, maintenance or operation. It does not include channels or harbors deauthorized by Federal law before 1985. A complete list of the ports subject to the harbor maintenance fee is set forth below:

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE

Port code, port name, and state	Port descriptions and notations
Alaska	
3126—Anchorage	
3106—Dalton Cache	
3102—Ketchikan	
3127—Kodiak	
3112—Petersburg	
3125—Sand Point	
3115—Sitka	
Alabama	
1901—Mobile	
California	
2802—Eureka	Includes Crescent City.
Los Angeles/Long Beach Port	Includes Dana Point; movements between these locations are intraport.
2709—Long Beach Harbor	
2704—Los Angeles	
2713—Port Hueneme	Includes Channel Island Hbr.
2501—San Diego	Includes Oceanside Hbr.
2707—San Luis	
San Francisco Bay Area Ports*	Includes all points inshore of the Golden Gate Bridge on the bays and the straits on the Napa, Sacramento and San Joaquin Rivers. and on the deep water channels to Sacramento and Stockton. Movements between points above Suisun Bay (Longitude 122 degrees West at Port Chicago), are intraport. Movements between points below Longitude 122 degrees West are intraport. All other movements are interport.
2813—Alameda	
2830—Carquinez Strait	
2815—Crockett	
2820—Martinez	
2811—Oakland	
2821—Redwood City	
2812—Richmond	
2816—Sacramento	
2809—San Francisco	
2828—San Joaquin	
2829—San Pablo Bay	
2827—Shelby	
2810—Stockton	
2831—Suisun Bay	
Connecticut	
0410—Bridgeport	Includes Housatonic River, and Stamford Harbor.
0411—Hartford	Includes all points on the Connecticut River between Hartford and Long Island Sound.
0412—New Haven	
0413—New London	
District of Columbia	
Potomac River Ports, DC, MD, & VA*.	Includes all points on the Potomac River (see Chesapeake Bay Ports: MD and VA map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA line	
5401—Washington, DC	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
Florida	
1807—Boca Grande	
1806—Carabelle	
1805—Fermandina Beach	
5205—Fort Pierce	
1803—Jacksonville	
5202—Key West	
5201—Miami	
1818—Panama City	
1819—Pensacola	
5203—Port Everglades	
1820—Port St. Joe	
Tampa Bay Ports*	Includes Alafia River, Port Manatee, Port Sutton, Port Tampa, Weedon Island and all other points on or approached using the Tampa Harbor Channel inshore of the Sunshine Skyway Bridge. Movements between these points are intraport.
1814—St. Petersburg	
1801—Tampa	
5204—West Palm Beach	
Georgia	
1701—Brunswick	Includes St. Marys River.
1703—Savannah	
Hawaii	
3202—Hilo	
3201—Honolulu	
3203—Kahului	Includes Kaunakakai Harbor.
3204—Nawiliwili-Port Allen	
Illinois	
Chicago Area Ports*	Includes Indiana Harbor, does not include Buffington Hbr.
3901—Chicago	
3904—East Chicago, IN	
Indiana	
3905—Gary	Includes only Michigan City and Burns Waterway Harbor. Fee does not apply at Gary.
3905—East Chicago*	See Chicago Area Ports, Illinois.
Louisiana	
2017—Lake Charles	
Mississippi River Ports:	
Baton Rouge and Vicinity*	Includes all river points from River Mile 115 Above Head of Passes (AHP) at the St. Charles Parish-Jefferson Parish line, to River Mile 233.9 AHP at Baton Rouge. Movements between these points are intraport.
2004—Baton Rouge	
2009—Destrehan	
2010—Grameroy	
2014—Good Hope	
2013—St. Rose	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
Mississippi River Ports:	
New Orleans and Vicinity*	Includes all river points from River Mile 115 AHP to Mile 21.6 BPH (Below Head of Passes) via Southwest Pass and to Mile 14.7 BPH via South Pass. Also includes all points on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet. Movements between these points are intraport.
2012—Avondale	
2002—New Orleans	
2005—Port Sulphur	
2901—Morgan City*	Includes Houma and points on the Gulf Intracoastal Waterway between Mile 49.8 West and Mile 107.0 West. Movements between these points are intraport.
Maine	
0102—Bangor	
0111—Bath	
0132—Belfast	Includes Penobscot River points (Bucksport and Winterport); fee does not apply at Belfast, Sandy Point, or Castine Harbor.
0101—Portland	
Maryland	
Chesapeake Bay Ports: Maryland*.	Includes all Maryland points on Chesapeake Bay and its tributary waters except for the Potomac River. Also includes the Waterway from Delaware River to Chesapeake Bay west of U.S. 13 highway bridge. Movements between these points are intraport. (Also see Chesapeake Bay Ports: VA.)
1303—Baltimore	
1302—Cambridge	
Massachusetts	
0401—Boston*	Includes all of the Port of Boston inshore of Castle Island on the Inner Harbor and Chelsea and Mystic Rivers, and all points on the Weymouth Fore, and Town Rivers. Movements between points on the Saugus River in the north to Scituate in the south are intraport.
0404—Gloucester	
0407—Fall River	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
Michigan	
3843—Alpena	Fee does not apply to Stoneport.
3801—Detroit	
3844—Ferrysburg	
3816—Grand Haven	
3809—Marquette	
3815—Muskegon	Includes Pentwater Harbor and South Haven Harbor.
3802—Port Huron	Includes Port Huron and all points on the St. Clair and Black Rivers in St. Clair County. Also includes Harbor Beach, Michigan.
3842—Presque Isle	
3804—Saginaw-Flint-Bay City	Does not include Alabaster.
3803—Sault Ste Marie	Does not include Port Dolomite or Port Inland, Michigan; does include Manistique, Michigan, and Grand Marais Harbor, Michigan.
Minnesota	
Duluth/Superior	Includes Duluth, MN, and Superior, WS; movements between these points is intraport.
3601—Duluth, MN	
3608—Superior, WS	
3614—Silver Bay	Fee applies only at Grand Marais.
Mississippi	
1902—Gulfport	
1903—Pascagoula	
New Hampshire	
0131—Portsmouth	
New Jersey	
1107—Camden	(see Delaware River Ports).
1113—Gloucester	(see Delaware River Ports).
1105—Paulsboro	(see Delaware River Ports).
1008—Newark	(see New York Harbor).
1004—Perth Amboy	(see New York Harbor).
New York	
New York Harbor, NY, NJ*	Includes all points in New York and New Jersey within the Port of New York on the waters inshore of a line between Sandy Hook and Rockaway Point and south of Tappan Zee Bridge on the Hudson and west of Throgs Neck Bridge on the East River. Movements between all points within the New York Port District boundaries described in New York Code (Chapter 154, Laws of New York, 1921), are intraport.
1001—New York, NY	
1003—Newark, NJ	
1004—Perth Amboy, NJ	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
1002—Albany*	Includes all points on the Hudson River between Tappan Zee Bridge and the Troy Lock and Dam.
0901—Buffalo-Niagara Falls	Includes Cattaraugus Creek.
0706—Cape Vincent	
0701—Ogdensburg	
0904—Oswego	
0903—Rochester	
0905—Sodus Point	Includes Little Sodus Bay Harbor.
North Carolina	
1511—Beaufort-Morehead City	Includes all points on the Cape Fear and Northeast Cape Fear Rivers inshore of the Atlantic Ocean entrance. Movements between these points are intraport.
1501—Wilmington	
Ohio	
4108—Ashtabula	(or Port Code 4122).
4101—Cleveland	
4109—Conneaut	(or Port Code 4122).
4111—Fairport	
4117—Huron	
4121—Lorain	
4105—Toledo-Sandusky	
Oregon	
Columbia River Ports, OR, WA	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River Mile 21. Movements between these points are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2908—Vancouver, WA	
2903—Coos Bay	Includes Port Orford.
2902—Newport	Includes Tillamook Bay.
Pennsylvania	
1102—Chester	(see Delaware River Ports).
4106—Erie	
1118—Marcus Hook	(see Delaware River Ports).
1101—Philadelphia	(see Delaware River Ports).

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
Puerto Rico	
4907—Mayaguez	
4908—Ponce	
4909—San Juan	
Rhode Island	
0502—Providence	
South Carolina	
1601—Charleston	
1602—Georgetown	
Texas	
2301—Brownsville	
5312—Corpus Christi	
5311—Freeport	
Galveston Bay Ports*	Includes Port Bolivar and all points on Galveston Bay in Galveston County. Movements between these points are intraport.
5310—Galveston	
5306—Texas City	
5301—Houston*	Includes Bayport, Baytown, and all other points on or accessed via the Houston Ship Channel north of the Galveston County line. Movements between these points are intraport.
5313—Port Lavaca	
Sabine Ports*	Includes Port Neches, Sabine Pass and all other points on the Sabine-Neches Waterway. Movements between these points are intraport.
2104—Beaumont	
2103—Orange	
2101—Port Arthur	
2102—Sabine	
Virginia	
5402—Alexandria*	(see District of Columbia, Potomac River Ports).
Chesapeake Bay Ports: Virginia*.	Includes all Virginia points on Chesapeake Bay inshore of a line from Cape Henry to Cape Charles, and tributary waters including the ports of Hampton Roads. Does not include the Potomac River or the James River above the James River Bridge at Newport News. Movements between these points are intraport. (Also see Chesapeake Bay Ports: MD.)
1406—Cape Charles	
1402—Newport News	
1401—Norfolk	
James River Ports, VA*	Includes all points on the James River above the James River Bridge at Newport News. Movements between these points are intraport.
1408—Hopewell	
1404—Richmond-Petersburg	

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS: SUBJECT TO SECTION 1402 OF PUB. L. 99-662 HARBOR MAINTENANCE FEE—Continued

Port code, port name, and state	Port descriptions and notations
Washington	
3003—Aberdeen	
Puget Sound Ports, WA*	Includes *only* the ports listed. Movements between these ports or any other U.S. points on Puget Sound or the Strait of Juan de Fuca east of Cape Flattery are intraport.
3005—Bellingham	
3006—Everett	
3026—Olympia	
3007—Port Angeles	
3001—Seattle	
3002--Tacoma	
2909—Kalama	(see Columbia River Ports, OR).
2905—Longview	(see Columbia River Ports, OR).
2908—Vancouver	(see Columbia River Ports, OR).
Wisconsin	
3602—Ashland	Includes Port Wing.
3706—Manitowoc	Includes Two Rivers and Kewaunee.
3702—Marinette	Includes Oconto.
3701—Milwaukee	
3708—Racine	
3707—Sheboygan	
3608—Superior	(see Duluth/Superior, Minnesota).

Note: The port codes shown in the above listing are those of the U.S. Customs Service.

*Indicates that a map of this port area is available from the U.S. Customs Service.

(2) *Commercial cargo* means, unless exempted by paragraphs (c) (1) and (2) of this section, merchandise transported on a commercial vessel and passengers transported for compensation or hire. Whenever the term "cargo" is used, it means merchandise, but not passengers.

(3) *Commercial vessel* means, unless exempted by paragraph (c)(3) of this section, any vessel used in transporting commercial cargo by water for compensation or hire, or in transporting commercial cargo by water in the business of the owner, lessee or operator of the vessel.

(4) *Ferry* means any vessel which arrives in the U.S. on a regular schedule during its operating season at intervals of at least once each business day.

(c) *Exemptions.* The following are not subject to the fee:

(1) Bunker fuel, ship's stores, sea stores and vessel equipment.

(2) Fish or other aquatic animal life, caught and not previously landed on shore.

(3) Ferries engaged primarily in the transport of passengers and their vehicles between points within the U.S. or between the U.S. and contiguous countries.

(4) Certain loadings and unloadings of cargo in Alaska, Hawaii, or the possessions of the U.S. as defined in this paragraph.

(i) Descriptions of exempt loadings/unloadings:

(A) Cargo loaded on a vessel in a port in the U.S. mainland for transportation to Alaska, Hawaii, or any possession of the U.S. for ultimate use or consumption in Alaska, Hawaii, or any possession of the U.S.

(B) Cargo loaded on a vessel in Alaska, Hawaii, or any possession of the U.S. for transportation to the U.S. mainland for ultimate use or consumption in the U.S. mainland.

(C) Cargo described in paragraph (c)(4)(i)(A) of this section unloaded in Alaska, Hawaii, or any possession of the U.S.

(D) Cargo described in paragraph (c)(4)(i)(B) of this section unloaded in the U.S. mainland.

(E) Cargo loaded on a vessel in Alaska, Hawaii, or a possession of the U.S. and unloaded in the state or possession in which loaded.

(ii) For purposes of paragraph (c)(4) of this section:

(A) *Cargo* does not include crude oil with respect to Alaska.

(B) *U.S. mainland* means the continental U.S. excluding Alaska.

(C) *Possessions* of the U.S. means Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, the Northern Mariana Islands and the Pacific Trust Territories.

(5) Commercial vessels, if any fuel used to move the cargo is subject to the Inland Waterway Fuel Tax (See section 4042, Internal Revenue Code of 1954, as amended by Pub. L. 95-502 and Pub. L. 99-662).

(6) Cargo entering the U.S. in bond for transportation and direct exportation to a foreign country, unless, with respect to cargo exported to Canada or Mexico;

(i) The Secretary of the Treasury determines that Canada or Mexico has imposed a substantially equivalent port use fee on commercial vessels or commercial cargo using ports of their countries; or

(ii) A study made pursuant to the Water Resources Development Act of 1986 (Pub. L. 99-662) finds that the fee is not likely to cause significant economic loss to a U.S. port or diversion of a significant amount of cargo to a port in a contiguous country.

(7) Cargo or vessels of the U.S. or any agency or instrumentality of the U.S.

(d) *Special rules.*—(1) *Intraport.* The fee is not to be assessed on the mere movement of commercial cargo within a port.

(2) *Same vessel, same cargo.* If a fee is assessed when cargo is loaded on a vessel, the unloading of the same cargo from that vessel is not subject to the fee. If a fee is assessed when cargo is unloaded from a vessel, the reloading of the same cargo on that vessel is not subject to the fee.

(3) *De minimis for individual shipments.* The fee shall not be assessed on loadings or unloadings of cargo in which:

(i) *For imported cargo:* The shipment would be entitled to be entered under informal entry procedures as provided for in § 143.21 of this chapter.

(ii) *For exported cargo:* The shipment does not require either the filing of a Shipper's Export Declaration (SED) as provided for in § 4.63 of this chapter or equivalent documentation as authorized under 15 CFR 30.39(b).

(iii) *For domestic cargo:* The value of the shipment does not exceed $1,000.

(4) *De minimis for quarterly payments.* Quarterly payment is not required if the total value of all shipments for which a fee was assessed for the quarter does not exceed $10,000.

(e) *Collections.*—(1) *Domestic vessel movements.*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel at a port within the definition of this section to be transported between ports in the U.S. or is unloaded from a commercial vessel at a port within the definition of this section after having been transported between ports in the U.S., the shipper (the person or corporation who pays the freight) of that cargo is liable for the payment of the port use fee at the time of unloading. The fee will be imposed only once on a movement pursuant to paragraph (d)(2) of this section. The fee is to be based upon the value of the cargo as determined by standard commercial documentation where such documentation is available. Otherwise, the value is to be determined under 19 U.S.C. 1401a as if it were imported merchandise. The Vessel Operation Report (Army Corps of Engineers Form 3925) is to be completed and submitted to the Army Corps of Engineers in accordance with the procedures set forth in 33 CFR Ch. II, Part 207. The shipper's name, either the internal revenue service or social security number of the shipper and the tax exemption code (as it appears in the Vessel Operation Report instructions) claimed for the shipment are to be included on the Vessel Operation Report.

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a summary sheet of the fees to U.S. Customs Service, P.O. Box 70904, Chicago, Illinois 60673-0904. The summary sheet should be in the following format:

DOMESTIC VESSEL MOVEMENT SUMMARY SHEET FOR QUARTER

DATED FROM _____ TO _____

_____
(Name of Shipper listed on Vessel Operation Report)

_____
(Shipper's IRS or SS # appearing on Vessel Operation Report. Note whether it is SS or IRS #)

Date unloaded	Origin of shipment	Destination of shipment	Commodity type (code) shipped	Value of shipment

SEND TO:

U.S. Customs Service
P.O. Box 70904
Chicago, Illinois 60673-0904

Collection Class Code 503

Value of total shipments for quarter _____

Total fee paid _____
(Total value × .0004)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding domestic shipments subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of shipper)

_____
(Date)

(2) *Export vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel for export at a port within the definition of this section, the exporter of that cargo (the name that appears on the SED or equivalent document authorized under 15 CFR 30.39(b)) is liable for the payment of the port use fee at the time of loading. The fee is based upon the value of the shipment loaded as required to be indicated on the SED or equivalent documentation. The SED or equivalent documentation is to be completed and submitted in accordance with the procedures set forth in § 4.63 of this chapter and 15 CFR Part 30.

(ii) *Fee payment.* The exporter whose name appears on the SED or equivalent documentation shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673–0915. Accompanying the payment shall be either a summary sheet of all the fees, or if the exporter files Automated Summary Monthly Shipper's Export Declarations with the Bureau of Census in accordance with Foreign Trade Statistics Regulations (15 CFR 30.39), a cover letter identifying the exporter, his exporter identification number (EIN), Census Bureau reporting symbol and the quarter for which the payment is being made. If a summary sheet is used, it should be in the following format:

EXPORT VESSEL MOVEMENT SUMMARY SHEET FOR QUARTER

DATED FROM _____ TO _____

_____ _____

(Name of Exporter Listed on SED) *(RIN # appearing on SED. Note whether it is IRS or SS #)*

Origin of shipment	Destination of shipment	Date of origin of shipment	Commodity type (code) shipped*	Value of shipment

SEND TO:

U.S. Customs Service
P.O. Box 70915
Chicago, Illinois 60673-0915

Collection Class Code 502

Total value of shipments for quarter _____

Total fee paid _____
(Total value × .0004)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding cargo loaded for export subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of exporter)

_____
(Date)

*Show Schedule B number for first line item on SED only.

(3) *Import vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when imported cargo is unloaded from a commercial vessel at a port within the definition of this section, and destined for either consumption, warehousing, or foreign trade zone admission, the importer of that cargo, or in the case of foreign trade zones, the person or corporation responsible for bringing merchandise into the zone, is liable for the payment of the port use fee at the time of unloading. The fee is based on the U.S. Customs appraised value of the shipment pursuant to 19 U.S.C. 1401a, the same basis as that used for duty payment. The fee shall be collected on all formal entries, including warehouse entries and temporary importation under bond entries, and admissions into foreign trade zones.

(ii) *Fee payment.* The port use fee on unloading of imported cargo shall be paid in accordance with the normal Customs collection procedures set forth in §§ 24.1 and 141.1 of this chapter, except as provided for merchandise admitted into foreign trade zones in paragraph (e)(3)(iii) of this section. The U.S. Customs Entry Summary Form (Customs Form 7501), is to be completed with the amount of the fee shown and identified on the form. The fee shall be paid by the importer by adding it to any normal duty, tax or fee payable at the time of formal entry processing.

If no other duty, tax, or fee is imposed on the shipment, and the fee exceeds $3, a check or money order for the amount of the fee shall be attached to the Customs entry forms submitted.

(iii) *Foreign trade zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, shall pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for the quarter and a summary sheet of the fees to U.S. Customs, P.O. Box 70981, Chicago, Illinois 60673–0981. Fees shall be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator. The summary sheet should be in the following format:

FOREIGN TRADE ZONE ADMISSIONS SUMMARY SHEET FOR QUARTER

DATED FROM _____ TO _____

_____ _____

(Name of Applicant Listed on CF214) *(Applicant's IRS or SS #. Note whether it is SS or IRS #)*

Date unloaded	Origin of shipment	Commodity	Value of shipment

SEND TO:

U.S. Customs Service
P.O. Box 70981
Chicago, Illinois 60673-0981

Collection Class Code 505

Total value of shipments for quarter _____

Total fee paid _____
(Total value × .0004)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding importations into foreign trade zones subject to the harbor maintenance fee for the quarter ending _____ is complete and accurate to the best of my knowledge.

_____
(Signature of applicant for admission)

_____
(Date)

(4) *Passengers*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when a passenger boards or disembarks a commercial vessel at a port within the definition of this section, the operator of that vessel is liable for the payment of the port use fee. The fee is to be based upon the value of the actual charge for transportation paid by the passenger or on the prevailing charge for comparable service if no actual charge is paid. The vessel operator on each cruise is liable only once for the port use fee for each passenger.

(ii) *Fee payment.* The operator of the passenger-carrying vessel shall pay the accumulated fees on a quarterly basis in accordance with paragraph (f) of this section by mailing a check or money order payable to the U.S. Customs Service for all fees for which he is liable for the quarter and a summary sheet of the fees to U.S. Customs Service, P.O. Box 70969, Chicago, Illinois 60673–0969. The summary sheet should be in the following format:

CRUISE VESSEL SUMMARY SHEET FOR QUARTER DATED

FROM _____ **TO** _____

_____
(Name of Carrier)

_____
(Name of Vessel Operator)

_____
(Vessel Operator's IRS or SS #. Note whether it is IRS or SS #)

Date of cruise	Number of passengers on cruise	Total eligible charges for passengers on cruise

SEND TO:

U.S. Customs Service
P.O. Box 70969
Chicago, Illinois 60673-0969

Collection Class Code 504

Total eligible charges for passengers for quarter _____

Total fee paid _____
(Total charges × .0004)

CERTIFICATION

I hereby certify under penalties provided by law that the above information regarding passengers transported during the quarter ending _____ subject to the harbor maintenance is complete and accurate to the best of my knowledge.

_____
(Signature of vessel operator)

_____
(Date)

(f) *Quarterly payments.* All quarterly payments required by this section must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September, and December.

(g) *Maintenance of records.* Each importer, exporter, applicant for admission of cargo into a foreign trade zone, shipper and cruise vessel operator affected by this section shall maintain all such documentation necessary for Customs to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 5 years from the date of fee calculation. The affected parties shall advise the Director, National Finance Center, Attn: Billings and Collections, P.O. Box 68903, Indianapolis, Indiana 46268, of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this paragraph. The Director, National Finance Center, shall be promptly notified of any changes in the identifying information submitted. The records shall be maintained and made available for inspection, copying, reproduction or other official use by Customs in accordance with the provisions of §§ 162.1a through 162.1i of this chapter.

(h) *Penalties for failure to pay harbor maintenance fee and file summary sheet.*—(1) *Amount of penalty.* Any party (including the importer, exporter, or shipper) who fails to pay the harbor maintenance fee and file the summary sheet at the time specified by regulation shall incur a penalty equal to the amount of liquidated damages assessable for late filing of an entry summary pursuant to the provisions of § 142.15 of this chapter.

(2) *Application for relief.* The party shall follow the procedures set forth in Part 171 of this chapter in filing an application for relief.

(3) *Mitigation.* Any penalty assessed under this provision shall be mitigated in a manner consistent with guidelines published pursuant to the provisions of § 172.22(d)(1) of this chapter relating to cancellation of claims for liquidated damages for late filing of entry summaries.

(i) *Privacy Act notice.* Whenever an identification number is requested on the summary sheets provided for in paragraph (e) of this section, the disclosure of the social security number is mandatory when an internal revenue service number is not disclosed. Identification numbers are solicited under the authority of Executive Order 9397 and Pub. L. 99–662. The identification number provides unique identification of the party liable for the payment of the harbor maintenance fee. The number will be used to compare the information on the summary sheets with information submitted to the government on other forms required in the course of shipping, exporting or importing merchandise, which contain the identification number, *e.g.*, the SED, Vessel Operation Report, to verify that the information submitted is accurate and current. Failure to disclose an identification number may cause a penalty pursuant to paragraph (h) of this section. The above information is set forth pursuant to the Privacy Act of 1974 (Pub. L. 93–579). **[TD 87–44.]**

§ 24.32 Claims; unpaid compensation of deceased employees and death benefits.

(a) A claim made by a designated beneficiary or a surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. A claim made by anyone other than a designated beneficiary or surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1155, Claim for Unpaid Compensation of Deceased Civilian Employee. The claims shall be forwarded to the Customs office where the deceased was employed. **[TDs 48599, 52717, Gen. Reg. 42 (4 Comp. Gen. 1096); Sup. 1 (7 Comp. Gen. 848); Sup. 3 (12 Comp. Gen. 673).]**

(b) Claims for death benefits, either in the form of an annuity or lump-sum payment of the amount to the credit of the deceased officer or employee in the Retirement and Disability Fund shall be executed on standard Form 100, Application for Death Benefit, and forwarded together with a certified copy of the public record of death directly to the Civil Service Commission, Washington, D.C. 20415. (Secs. 1, 3, 64 Stat. 395, 396, sec. 11, 41 Stat. 619, as amended; 5 U.S.C. 61f, 61h, 724)

§ 24.34 Vouchers; vendors' bills of sale; invoices.

(a) Vouchers or invoices for transportation and related services which are intended for payment from official funds shall contain the following certification signed by the claimant: **[TDs 52752, 54355; Gen. Regs. No. 134]**

> I certify that the above bill is correct and just and that payment has not been received.

Vouchers, vendors' bills of sale, or invoices for purchases or services other than personal do not require the foregoing certification.

(b) Every voucher shall be in the name of the person or persons furnishing the service or supplies, except in the case of a service or supplies paid for in an emergency by a Customs officer or employee, in which case the voucher may be in the name of the officer or employee who made the payment.

(c) The signature of a claimant made by a mark shall be attested in each case by a disinterested witness.

(d) The dates appearing on vouchers and on receipts filed in support thereof shall always be the actual dates of the transactions recorded or action taken thereon. As many copies in memorandum form, duly authenticated if desired, may be prepared as administrative or other requirements demand.

(e) When an erasure, interlineation, or change of any kind is made in a voucher after it has been certified by the claimant, such correction or change shall be initialed and dated by the claimant.

(f) (1) Vouchers for passenger transportation furnished Customs officers or employees on Government transportation requests, standard Form 1169, and vouchers for transportation of freight and express furnished on Government bills of lading, standard Form 1103, issued by Customs officers or employees shall be rendered on Public Voucher for Transportation Charges, standard Form 1171 or 1113, respectively, to the Customs office to be billed as indicated on the transportation request or bill of lading. **[TDs 52752, 54355; Gen. Reg. 97—Revised (25 Comp. Gen. 924); Gen. Regs. No. 123 (34 Comp. Gen. 782).]**

(2) Charges for freight or express must not be included on the same vouchers with charges for passenger transportation. The words "Passenger," "Freight," or "Express," as the case may be, should be printed or otherwise placed by

the carrier immediately above the title of the voucher form. Original Government bills of lading, standard Form 1103, or transportation requests, standard Form 1169, or certificates in lieu thereof, standard Forms 1108 or 1172, respectively, shall be attached to these vouchers. (Sec. 22, 28 Stat. 210, as amended; 41 U.S.C. 21)

§ 24.36 Refunds of excessive duties, taxes, etc.

(a) When it is found on liquidation or reliquidation of an entry that a refund of excessive duties or taxes, or both, is due, a refund shall be prepared in the name of the person to whom the refund is due, as determined by paragraphs (b) and (c) of this section. If an authority to mail checks to someone other than the payee, Customs Form 4811, is on file, the address of the payee shall be shown as in care of the address of the authorized persons. If a power of attorney is on file, the address of the payee may be shown as in care of the address of such attorney, if requested. A Form 4811 received by Customs will not be effective if a Customs transaction requiring the use of the owner's importer number has not been made within 3 years from the date the Form 4811 was filed or if there is no unliquidated entry on file to which such number is to be associated. **[TDs 45951, 47052, 48599, 49645, 53370, 55389, 67–33, 89–1.]**

(b) Refunds of excessive duties or taxes shall be certified for payment to the importer of record unless a transferee of the right to withdraw merchandise from bonded warehouse is entitled to receive the refund under § 557(b), Tariff Act of 1930, as amended, or an owner's declaration has been filed in accordance with § 485(d), Tariff Act of 1930, or a surety submits evidence of payment to Customs, upon default of the principal, of amounts previously determined to be due on the same entry or transaction. The certification of a refund for payment to a nominal consignee may be made prior to the expiration of the 90-day period within which an owner's declaration may be filed as prescribed in § 485(d) of the Tariff Act, provided the nominal consignee waives in writing his right to file such declaration. If an owner's declaration has been duly filed, the refund shall be certified for payment to the actual owner who executed the declaration, except that, irrespective of whether an owner's declaration has been filed, refunds shall be certified for payment to a transferee provided for in § 557(b), Tariff Act of 1930, as amended, if the moneys with respect to which the refund was allowed were paid by such transferee. If a surety submits evidence of payment to Customs, upon default of the principal, for an amount previously determined to be due on an entry or transaction the refund shall be certified to that surety up to the amount paid by it or shall be applied to other obligations of the surety. **[CIEs 612/41; 694/41; TDs 45951, 53336, 53399, 71–289.]**

(c) If the nominal consignee has become bankrupt, refunds of duties or internal revenue taxes on merchandise entered in the name of such nominal consignee for the account of the actual owner shall be withheld from payment pending the receipt of a claim therefor and the establishment of rights thereto, unless the declaration of the actual owner has been filed with the district director under § 485(d), Tariff Act of 1930. **[TD 53370.]**

(d) The authority of district directors to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in § 6423(e)(1), Internal Revenue Code of 1954 (26 U.S.C. 6423(e)(1)), is confined to cases of the types which are excepted from the application of § 6423, Internal Revenue Code of 1954 (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which the district director is authorized to make refunds of such taxes are those in which: **[TDs 54896, 89–1.]**

(1) The tax was paid or collected on an article imported for the personal or household use of the importer;

(2) The refund is made pursuant to provisions of laws and regulations for drawback;

(3) The tax was paid or collected on an imported article withdrawn from the market, returned to bond, or lost or destroyed, when any law expressly provides for refund in such case;

(4) The tax was paid or collected on an imported article which has been lost, where a suit or proceeding was instituted before June 15, 1957;

(5) The refund of tax is pursuant to a claim based solely on errors of computation of the quantity of the imported article, or on mathematical errors in computation of the tax due;

(6) The tax was paid or collected on an imported article seized and forfeited, or destroyed, as contraband;

(7) The tax was paid or collected on an imported article refused admission to Customs territory and exported or destroyed in accordance with § 558, Tariff Act of 1930, as amended;

(8) The refund of tax is pursuant to a reliquidation of an entry under § 520(c)(1), Tariff Act of 1930, as amended, and does not involve a rate of tax applicable to an imported article; or

(9) The tax was paid or collected on a greater quantity of imported articles than that actually imported and the fact of the deficiency is established to the district directors' satisfaction before liquidation of the entry becomes final.

(e) In any instance in which a refund of an alcohol or tobacco tax is not of a type covered by paragraph (d) of this section the following procedure shall apply: **[TDs 54896, 55472.]**

(1) The district director shall issue a notice of refund for duty only and shall place the following statement on the notice of refund issued for duty: "Claim or refund of any overpayment of internal revenue tax on this entry must be executed and filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal revenue region in which the claimant is located, in accordance with internal revenue regulations (Title 26 of the Code of Federal Regulations)." On request of the claimant, the district director shall issue a certified statement on Customs letterhead identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on internal revenue Form 843 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim shall be executed on internal revenue Form 843 (original only) which may be procured from offices of the Internal Revenue Service and shall be filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal revenue region in which the claimant is located. The certified statement shall be attached to and filed in support of such claim which may include refunds under more than one entry but shall be limited to refunds under entries filed in the same Customs district and the same internal revenue region. The data to be shown on the claim shall be as prescribed in internal revenue regulations,

with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of § 6407, Internal Revenue Code of 1954 (26 U.S.C. 6407) shall be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable internal revenue regulations. (72 Stat. 9; 26 U.S.C. 6423) **[TD 54896.]**

§ 24.70 Claims; deceased or incompetent public creditors.

(a) Claims for amounts due individual deceased public creditors of the U.S. (except civilian officers and employees subject to the provisions of § 61f–61k, title 5, United States Code), should be made on standard Form No. 1055—Revised. Such claims include claims for payments due deceased contractors for articles furnished or services performed, and claims for payments due deceased importers or owners of merchandise on account of refunds of excessive duties, or taxes, or for payment of drawback, etc. Claims for payment of Government checks drawn on the Treasurer of the U.S. or other authorized Government depositary to the order of such public creditors, which cannot be paid because of the death of the payee, should be stated on standard Form 1055—Revised. Information should be furnished regarding the disposition of these checks in case they are not in possession of the claimant, otherwise they should accompany the claim. **[TDs 52793, 53399.]**

(b) No form is prescribed for use of a guardian or committee of an estate of an incompetent in making claim for sums due from the U.S. Such guardian or committee may submit in letter form, over his address and signature, an application for amounts due an estate of an incompetent, setting forth the incompetent's connection with the U.S. Customs Service. This application should be supported by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee. In case the total amount due the estate of the incompetent is small, and no guardian or committee of the estate has been or will be appointed, the application may be submitted by the person or persons having care or custody of the incompetent, or by close relatives who will hold any amount found due for the use and benefit of the incompetent. Applications for recurring payments need not be accompanied by an additional certificate of the court, but should be supported by a statement that the appointment is still in full force and effect. All Government checks drawn on the Treasurer of the U.S. or other authorized Government depository to the order of individuals which cannot be paid because of incompetency of the payee should accompany the claim, otherwise an explanation should be given as to the disposition of the check.

(c) Claims for payments due deceased or incompetent contractors should be submitted to the Customs field officer at whose order the articles were furnished or services performed. Claims for refunds of excessive duties, or taxes, or for payment of drawback and other similar claims due deceased or incompetent public creditors shall be submitted to the appropriate regional commissioner of Customs. The Customs field officer may grant necessary assistance to claimants to insure proper execution of standard Form 1055—Revised in the case of deceased public creditors, and in the case of incompetent public creditors to insure submission of the application in proper form. The regional commissioner shall settle the claim unless there is a doubtful question of fact or law, in which case the claim shall be forwarded to the Assistant Director (Accounting), Division of Financial Management, U.S. Customs Service, with originals or certified copies of any necessary documents and with an appropriate report and recommendation. **[TD 68–142.]**

§ 24.71 Claims for personal injury or damages to or loss of privately owned property.

Procedures for the settlement of claims arising from actions of Treasury Department employees are published in 31 CFR Part 3. **[TD 51684.]**

§ 24.72 Claims; set-off.

When an importer of record or other party has a judgment or other claim allowed by legal authority against the U.S., and he is indebted to the U.S., either as principal or surety, for an amount which is legally fixed and undisputed, the district director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government. **[TD 56388.]**

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the Customs laws which is not otherwise provided for shall be forwarded directly to Headquarters, U.S. Customs Service, together with all supporting documents and information available.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

Metal Articles Imported To Be Used in Remanufacture by Melting, or To Be Processed by Shredding, Shearing, Compacting, or Similar Processing Which Renders Them Fit Only for the Recovery of the Metal Content

Sec.

54.5 Scope of exemptions; nondeposit of estimated duty.

54.6 Proof of intent; bond; proof of use; liquidation.

Authority: R.S. 251, amended, sec. 624, 46 Stat. 759, 19 U.S.C. 66, 1624, Gen. Note 9, Harmonized Tariff Schedule of the United States (HTSUS), (sec. 101, 76 Stat. 72; subheadings 9817.00.80 and 9817.00.90, HTSUS; Section XV, Note 5, HTSUS).

Source: [TD 80-151, 45 FR 38041, June 6, 1980, unless otherwise noted.]

Metal Articles Imported To Be Used in Remanufacture of Melting, or To Be Processed by Shredding, Shearing, Compacting, or Similar Processing Which Renders Them Fit Only for the Recovery of the Metal Content

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Except as otherwise provided in this section, articles predominating by weight of metal to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, and actually so used, shall be entitled to free entry upon compliance with § 54.6, if entered, or withdrawn from warehouse for consumption, during the effective period of subheading 9817.00.80 and 9817.00.90, HTSUS (19 U.S.C. 1202). This provision does not apply to

(1) articles of lead, zinc, or tungsten;

(2) metal-bearing materials provided for in Chapter 26, HTSUS; or

(3) unwrought metal provided for in Section XV, HTSUS. **[TDs 54700, 55978, 87-75, 89-1.]**

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal, from warehouse for consumption of the articles described in paragraph (a) of this section if the district director is satisfied at the time of entry or withdrawal by written declaration of the importer that the merchandise was imported to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders it fit only for the recovery of the metal content.

§ 54.6 Proof of intent; bond; proof of use; liquidation.

Articles predominating by weight of metal, described in § 54.5(a) shall be admitted free of duty upon compliance with the following conditions:

(a) There shall be filed in connection with the entry a statement of the importer consistent with the requirements of § 10.134 of this Chapter. **[TDs 87-75, 89-1.]**

(b) If the articles are entered for consumption or warehouse, a bond shall be filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Withdrawals from warehouse shall be made on Customs Form 7506. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section. **[TD 84-213.]**

(c) Within 3 years from the date of entry, or withdrawal from warehouse for consumption, the importer shall submit to the district director at the port of entry, a statement from the superintendent or manager of the plant at which the articles were used in remanufacture by melting, or were processed by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, showing:

(1) The name and location of the plant;

(2) The entry number, date, and port of entry (if the person making the statement is not in possession of this information, a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted);

(3) The date or inclusive dates of the remanufacture or processing of the articles; and

(4) A description of the remanufacture or processing in sufficient detail to enable the district director to determine whether it constituted a use in remanufacture by melting, or processing by shredding, shearing, compacting, or similar processing which rendered the articles fit only for the recovery of the metal content. In appropriate cases, the remanufacture or processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records which shall be available during normal business hours to any Customs officer. The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise. The burden shall be on the importer or plant manager to keep these records so that the claim actual use can be established readily. **[TD 79-159.]**

(d) If satisfactory proof of use of the articles in remanufacture by melting, or in processing by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the articles covered by such proof. If proof is not filed within 3 years from the date of entry, or withdrawal from warehouse for consumption, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty under subheading 9817.00.80 or 9817.00.90, HTSUS.

As used in this section, the phrase "In connection with the entry" means any time before liquidation of the entry or within the period during which a reliquidation may be completed (§ 113.43(c)). Therefore, a claim for free entry under subheading 9817.00.80 or 9817.00.90, HTSUS, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed. **[TDs 87-75, 89-1.]**

PART 101—GENERAL PROVISIONS

Sec.

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Authority: Note 9, HTSUS; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

Source: T.D. 77-241, 42 FR 54936, Oct. 12, 1977, unless otherwise noted.

§ 101.0 Scope.

This part sets forth general regulations governing the authority of Customs officers, and the location of Customs regions, districts, and ports of entry, and of Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs preclearance offices in foreign countries. In addition, this part contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identification cards issued to Customs officers and employees. **[TD 77-241.]**

§ 101.1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

(a) *Area.* "Area" refers to any of the three administrative areas created in the Customs district of New York City, New York, which is coextensive with Customs Region II, New York City, New York, and identified as Kennedy Airport Area, Newark Area, and New York Seaport Area, each of which is under the jurisdiction of an area director of Customs.

(b) *Customs district.* A "Customs district" is the geographical area under the jurisdiction of a district director of Customs.

(c) *Customs region.* A "Customs region" is the geographical area under the jurisdiction of a regional commissioner of Customs.

(d) *Customs station.* A "Customs station" is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the U.S.

(e) *Customs territory of the U.S.* "Customs territory of the U.S." includes only the States, the District of Columbia, and Puerto Rico.

(f) *Date of entry.* The "date of entry" or "time of entry" of imported merchandise shall be the effective time of entry of such merchandise, as defined in § 141.68 of this chapter.

(g) *Date of exportation.* "Date of exportation" or "time of exportation" shall be as defined in § 152.1(c) of this chapter.

(h) *Date of importation.* "Date of importation" means, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the U.S. In the case of merchandise imported by vessel, "date of importation" means the date on which the vessel arrives within the limits of a port in the U.S. with intent then and there to unlade such merchandise.

(i) *Duties.* "Duties" means Customs duties and any internal revenue taxes which attach upon importation.

(j) *Entry or withdrawal for consumption.* "Entry or withdrawal for consumption" means entry for consumption or withdrawal from warehouse for consumption.

(k) *Exportation.* "Exportation" means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the U.S. with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

(l) *Importer.* "Importer" means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be:

(1) The consignee, or

(2) The importer of record, or

(3) The actual owner of the merchandise, if an actual owner's declaration and superseding bond has been filed in accordance with § 141.20 of this chapter, or

(4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of part 144 of this chapter.

(m) *Port and port of entry.* The terms "port" and "port of entry" refer to any place designated by Executive order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms "port" and "port of entry" incorporate the geographical area under the jurisdiction of a port director when such port is one other than a district headquarters port. (The Customs District of the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, has its own Customs laws (48 U.S.C. 1406(i)). This district, therefore, is outside the Customs territory of the U.S. and the ports thereof are not "ports of entry" within the meaning of these regulations.)

(n) *Principal field officer.* A "principal field officer" is an officer in the field service whose immediate supervisor is located at Customs Service Headquarters. **[TD 84-213.]**

§ 101.2 Authority of Customs officers.

(a) *Supremacy of delegated authority.* Action taken by any person pursuant to authority delegated to him by the Secretary of the Treasury, whether directly or by subdelegation, shall be valid despite the existence of any statute or regulation, including any provision of this chapter, which provides that such action shall be taken by some

other person. Any person acting under such delegated authority shall be deemed to have complied with any statute or regulation which provides or indicates that it shall be the duty of some other person to perform such action.

(b) *Consolidation of functions.* Any reorganization of the Customs Service or consolidation of the functions of two or more persons into one office which results in the failure of a designated Customs officer to perform an action required by statute or regulation, shall not invalidate the performance of that action by any other Customs officer.

§ 101.3 Customs regions, districts and ports.

(a) *Redesignation of Customs districts and ports of entry.* The Assistant Secretary (Enforcement and Operations), pursuant to authority delegated by the Secretary of the Treasury, is authorized from time to time, as the needs of the Customs Service may require, to rearrange or consolidate the Customs districts, to discontinue ports of entry by abolishing them and establishing others in their place, and to change the location of the headquarters in any Customs district as the needs of the Customs Service may require.

(b) *Customs regions, districts and ports of entry listed.* The following is a list of Customs regions and districts, with a list of the ports in each district. (The Customs region of New York City, New York, is coextensive with the Customs district of New York City, New York.) The first-named port in each district, listed in capital letters, is the headquarters port. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports. **[TDs 78-99, 79-169, 79-201, 79-232, 79-254 83-209.]**

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
Northeast Region—Boston, Mass.	Portland, Maine ...	The States of Maine and New Hampshire except the county of Coos.	PORTLAND, MAINE, including territory described in E.O. 9297, Feb. 1, 1943; 8 FR 1479. Bangor, Maine, including Brewer, Maine (E.O. 9297, Feb. 1, 1943; 8 FR 1479). Bar Harbor, Maine, including Mount Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor and Trenton; (E.O. 4572, Jan. 27, 1927; T.D. 78-130). Bath, Maine, including Booth Bay and Wiscasset (E.O. 4356, Dec. 15, 1925). Belfast, Maine, including Searsport (E.O. 6754, June 28, 1934). Bridgewater, Maine, (E.O. 8079, Apr. 4, 1939; 4 FR 1475). Calais, Maine, including townships of Calais, Robbinston, and Baring (E.O. 6284, Sept. 13, 1933). Eastport, Maine, including Lubec and Cutler (E.O. 4296, Aug. 26, 1925). Fort Fairfield, Maine. Fort Kent, Maine. Houlton, Maine (E.O. 4156, Feb. 14, 1925). Jackman, Maine, including the townships Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River (T.D. 54683). Jonesport, Maine, including the towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport (E.O. 4296, Aug. 26, 1925; E.O. 8695, Feb. 25, 1941). Limestone, Maine. Madawaska, Maine. Portsmouth, N.H., including Kittery, Maine. Rockland, Maine. Van Buren, Maine. Vanceboro, Maine.
	St. Albans, Vt.....	The State of Vermont and the county of Coos, N.H.	ST. ALBANS, VT., including township of St. Albans (E.O. 3925, Nov. 13, 1923; E.O. 7632, June 15, 1937; 2 FR 1042 T.D. 77-165). Beecher Falls, Vt. Burlington, Vt., including the town of South Burlington (T.D. 54677). Derby Line, Vt. Highgate Springs/Alburg, Vt., including the territory described in T.D. 77-165. Norton, Vt., including the territory described in T.D. 73-249. Richford, Vt.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Boston, Mass.....	The State of Massachusetts, and Connecticut (T.D. 84-39).	BOSTON, MASS., including territory and waters adjacent thereto described in T.D. 56493. Bridgeport, Conn., including territory described in T.D. 68-224. Fall River, Mass., including territory described in T.D. 54476. Gloucester, Mass. Hartford, Conn., including territory described in T.D. 68-224. Lawrence, Mass., including the territory described in T.D. 71-12 (E.O. 5444, Sept. 16, 1930); (E.O. 10088, Dec. 3, 1949; 14 FR 7287). New Bedford, Mass. New Haven, Conn., including territory described in T.D. 68-224. New London, Conn., including territory described in T.D. 68-224. Plymouth, Mass. Salem, Mass., including Beverly, Marblehead, Lynn, and Peabody, Mass. (E.O. 9207, July 29, 1942). Springfield, Mass. (T.D. 69-189). Worcester, Mass.
	Providence, R.I....	The State of Rhode Island.	PROVIDENCE, including the territory described in T.D. 67-3. Newport.
	Ogdensburg, N.Y.	The counties of Clinton, Essex, Franklin, St. Lawrence, Jefferson, and Lewis in the State of New York.	OGDENSBURG. Alexandria Bay, including territory described in E.O. 10042, Mar. 10, 1949; 14 FR 1155. Cape Vincent. Champlain-Rouses Point, including territory described in T.D. 67-68. Clayton. Massena (T.D. 54834). Trout River, Chateaugay, Fort Covington, T.D. 83-253.
	Buffalo, N.Y.....	The counties of Oswego, Oneida, Onondaga, Cayuga, Seneca, Wayne, Broome, Tompkins, Chenango, Madison, Cortland, Hamilton, Schuyler, Chemung, Herkimer, Monroe, Ontario, Livingston, Yates, Steuben, Orleans, Genesee, Wyoming, Allegany, Erie, Niagara, Cattaraugus, Chautauqua, and Tioga in the State of New York.	BUFFALO-NIAGARA FALLS, N.Y. (T.D. 56512). Oswego. Rochester. Sodus Point. Syracuse. Utica.
	Philadelphia, Pa...	The State of Pennsylvania except the county of Erie, the State of Delaware, and that part of the State of New Jersey not included in the district of New York City.	PHILADELPHIA-CHESTER, PA., AND WILMINGTON, DEL., including Camden, Gloucester City, and Salem, N.J., and territory described in T.D. 84-195. Harrisburg, Pa. (T.D. 71-233). Pittsburgh, Pa., including the territory described in T.D. 67-197. Wilkes-Barre/Scranton, Pa., including the territory described in T.D. 75-64.
	Baltimore, Md.....	The State of Maryland except the counties of Montgomery and Prince George's.	BALTIMORE, including territory described in T.D. 68-123. Annapolis. Cambridge (E.O. 3888, Aug. 13, 1923). Crisfield, Md.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
New York Region—New York City, N.Y.	New York City, N.Y.	The counties of Sussex, Morris, Passaic, Hudson, Bergen, Essex, Union, Middlesex, and Monmouth in the State of New Jersey and that part of the State of New York not expressly included in the districts of Buffalo and Ogdensburg. [TD 81-160] (The district is divided into three areas, namely, Kennedy Airport Area, Newark Area, and New York Seaport Area, the limits of which are described in T.D. 85-108).	NEW YORK, N.Y., including territory described in E.O. 4205, Apr. 15, 1925 (T.D. 40809). Albany, N.Y. Perth Amboy, N.J.
North Central Region—Chicago, Ill.	Chicago, Ill.....	The State of Illinois lying north of lat. 39° N.; that part of the State of Indiana north of lat. 41° N. and west of longitude 86° W.; and the States of Iowa and Nebraska [TD 88-35].	CHICAGO, ILL., including territory described in T.D. 71-121. Davenport, Iowa, and Rock Island and Moline, Ill., including the territory described in T.D. 86-76. Des Moines, Iowa, including the territory described in T.D. 75-104. Omaha, Nebr., including the territory described in T.D. 73-228. Peoria, Ill., including the territory described in T.D. 72-130.
	Cleveland, Ohio...	The States of Ohio, Kentucky, that part of the State of Indiana lying south of lat. 41° N.; that part of the State of Indiana lying east of longitude 86° W.; and the county of Erie in the State of Pennsylvania [TD 88-35].	CLEVELAND, OHIO, including territory described in T.D. 87-123. Ashtabula/Conneaut, Ohio, including the territory described in T.D. 77-232. Cincinnati, Ohio-Lawrenceburg, Ind., including the territory described in T.D. 84-91. Columbus, Ohio, T.D. 82-9. Dayton, Ohio, including the territory described in T.D. 76-77. Erie, Pa., including territory described in T.D. 77-5. Indianapolis, Ind. Louisville, Ky., including the territory described in T.D. 77-232. Owensboro, Ky.-Evansville, Ind., including the territory described in T.D. 84-91. Toledo-Sandusky, Ohio, including the territory described in T.D. 84-89.
	St. Louis, Mo.....	The States of Missouri and Kansas, and that part of the State of Illinois lying south of lat. 39° N.	ST. LOUIS, MO., including the territory described in T.D. 69-224. Kansas City, Mo., including Kansas City, Kans., and North Kansas City, Mo. (E.O. 8528, Aug. 27, 1940) including the territory described in T.D. 67-56. Springfield, Mo., including all of the territory within Greene and Christian Counties, Missouri (T.D. 84-84). St. Joseph, Mo. Wichita, Kans., including the territory described in T.D. 74-93.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Duluth, Minn.....	The counties of Koochiching, Itaschi, St. Louis, Carlton, Pine, Lake, Cook, Clay, Aitkin, Norman, Wilkin, Ottertail, Becker, Mahnomen, Clearwater, Hubbard, Wadena, Cass, and Crow Wing in the State of Minnesota and the counties of Douglas, Bayfield, Ashland, and Iron in the State of Wisconsin, and the island of Isle Royale in the State of Michigan.	DULUTH, MINN., AND SUPERIOR, WIS., including the territory described in T.D. 55904. Ashland, Wis. Grand Portage, Minn. (T.D. 56073). International Falls-Ranier, Minn., including the territory described in T.D. 66-246.
	Milwaukee, Wis....	The State of Wisconsin, except the counties of Douglas, Bayfield, Ashland, and Iron and the county of Menominee in the State of Michigan.	MILWAUKEE, WIS., including the territory described in T.D. 72-105. Green Bay, Wis., including the townships of Ashwaubenon, Allouez, Preble, and Howard, and the city of De Pere (T.D. 54597). Manitowoc, Wis. Marinette, Wis., including Menominee, Mich. Racine, Wis., including the city of Kenosha and the townships of Mount Pleasant and Somers (T.D. 54884). Sheboygan, Wis.
	Minneapolis, Minn.	The State of Minnesota except those counties in the Pembina, North Dakota, and Duluth, Minn. districts.	MINNEAPOLIS-ST. PAUL, including the territory described in T.D. 69-15.
	Pembina, N. Dak.	The States of North and South Dakota and the counties of Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Red Lake, and Pennington in the State of Minnesota.	PEMBINA, N. DAK. Ambrose, N. Dak. (E.O. 5835, 13, 1932). Antler, N. Dak. Baudette, Minn. (E.O. 4422, Apr. 19, 1926). Carbury, N. Dak. (E.O. 5137, June 17, 1929). Dunseith, N. Dak. (E.O. 7632, June 15, 1937; 2 FR 1042). Fortuna, N. Dak. (E.O. 7632, June 15, 1937; 2 FR 1042). Hannah, N. Dak. Hansboro, N. Dak. Maida, N. Dak. (E.O. 7632, June 15, 1937; 2 FR 1042). Neche, N. Dak. Noonan, N. Dak. (E.O. 7632, June 15, 1937; 2 FR 1042). Northgate, N. Dak. Noyes, Minn. (E.O. 5835, Apr. 13, 1932). Pinecreek, Minn. (E.O. 7632, June 15, 1937; 2 FR 1042). Portal, N. Dak. Roseau, Minn. (E.O. 7632, June 15, 1937; 2 FR 1042). Saries, N. Dak. Sherwood, N. Dak. St. John, N. Dak. (E.O. 5835, Apr. 13, 1932). Walhalla, N. Dak. Warroad, Minn. Westhope, N. Dak. (E.O. 4236, June 1, 1925).

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Detroit, Mich	The State of Michigan except the Island of Isle Royale and the county of Menominee, Mich.	DETROIT, including territory described in E.O. 9073, Feb. 25, 1942; 7 FR 1588; and T.D. 53738. Battle Creek (T.D. 76-233). Grand Rapids (T.D. 77-4). Muskegon (E.O. 8315, Dec. 22, 1939), including territory described in T.D. 56230. Port Huron, including territory described in T.D. 87-117. Saginaw-Bay City-Flint (T.D. 82-9). Sault Ste. Marie (T.D. 79-74).
	Great Falls, Mont.	The States of Montana, Wyoming, Colorado, Utah, and that part of Idaho above 47° latitude (T.D. 85-22)..	GREAT FALLS, MONT. Butte, Mont., including the territory described in T.D. 73-121. Del Bonita, Mont. (E.O. 7947, Aug. 9, 1938; 3 FR 1965). Mail: Cut Bank, Mont. Denver, Colo. (T.D. 80-180). Eastport, Idaho. Morgan, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail: Loring, Mont. Opheim, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Plegan, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail: Babb, Mont. Porthill, Idaho. Raymond, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Roosville, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail: Eureka, Mont. Salt Lake City, Utah (T.D. 69-76). Scobey, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Sweetgrass, Mont. Turner, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Whitetail, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Whitlash, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042).
Southeast Region—Miami, Fla.	Miami, Fla.....	The counties of Hendry, Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Collier, Broward, Monroe, and Dade in the State of Florida.	MIAMI, including territory described in T.D. 53514. Key West, including territory described in T.D. 53994. Port Everglades (E.O. 5770, Dec. 31, 1931), including territory described in T.D. 53514. Mail: Fort Lauderdale, Fla. West Palm Beach (E.O. 4324, Oct. 15, 1925), including territory described in T.D. 53514.
	Tampa, Fla.....	The north shore of the St. Marys River and the city of St. Marys, Ga., and all the State of Florida except the counties of Hendry, Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Collier, Broward, Monroe, and Dade.	TAMPA, FLA., including territory described in T.D. 68-91. Apalachicola, Fla. Boca Grande, Fla. Carrabelle, Fla. (E.O. 7508, Dec. 11, 1936; 1 FR 2149). Fernandina Beach, including St. Marys, Ga. (T.D. 53033). Jacksonville, Fla. (T.D. 69-45). Orlando, Fla. (T.D. 76-306). Panama City, Fla. (E.O. 3919, Nov. 1, 1923). Pensacola, Fla. Port Canaveral, Fla., including territory described in T.D. 66-212. Port St. Joe, Fla. (E.O. 7818, Feb. 17, 1938; 3 FR 503). St. Petersburg, Fla. (E.O. 7928, July 14, 1938; 3 FR 1749), including territory described in T.D. 53994.
	San Juan, P.R.....	The Commonwealth of Puerto Rico.	SAN JUAN, including territory described in T.D. 54017. Aquadilla. Fajardo. Guanica. Humacao, including the territory described in T.D. 70-157. Jobos (E.O. 9162, May 13, 1942). Mayaguez (T.D. 22305). Ponce, including territory described in T.D. 54017.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Charlotte Amalie, St. Thomas, V.I..	All of the Virgin Islands of the U.S..	CHARLOTTE AMALIE, ST. THOMAS. Christiansted, St. Croix. Coral Bay, St. John. Frederiksted, St. Croix. Cruz Bay, St. John.
	Washington, D.C..	The District of Columbia, the counties of Montgomery and Prince George's in the State of Maryland, the counties of Loudon, Fairfax, and Arlington, and the city of Alexandria in the State of Virginia, including any independent cities and towns within such boundaries of such counties.	WASHINGTON, D.C., including the territory described in T.D. 68-67. Alexandria, Va. (T.D. 68-67).
	Norfolk, Va.....	The State of Virginia, except the counties of Loudoun, Fairfax, and Arlington, and the city of Alexandria, including any independent cities and towns within the boundaries of such counties, and the State of West Virginia.	NORFOLK AND NEWPORT NEWS, VA., including the waters and shores of Hampton Roads. Cape Charles City, Va. Charleston, W. Va., including the territory described in T.D. 73-221. Reedville, Va. Richmond-Petersburg, Va., including the territory described in T.D. 68-179.
	Wilmington, N.C...	The State of North Carolina.	WILMINGTON, including townships of Northwest Wilmington and Cape Fear (E.O. 7761, Dec. 3, 1937; 9 FR 2679, and territory described in E.O. 10042, Mar. 10, 1949; 14 FR 1155). Beaufort-Morehead City, including the territory described in T.D. 87-76. Charlotte (T.D. 56079). Durham (E.O. 4876, May 3, 1928) including territory described in E.O. 9433, Apr. 6, 1944; 9 FR 3761 and T.D. 82-9. Reidsville (E.O. 5159, July 18, 1929) including territory described in E.O. 9433, Apr. 6, 1944; 9 FR 3761. Winston-Salem, including the territory described in T.D. 87-64.
	Charleston, S.C...	The State of South Carolina.	CHARLESTON, including the territory described in T.D. 76-142. Columbia, including all of the territory in Richland and Lexington Counties (T.D. 82-239). Georgetown. Greenville-Spartanburg, including territory described in T.D. 70-148.
	Savannah, Ga.....	The State of Georgia, except the north shore of the St. Marys River and the city of St. Marys, Ga.	SAVANNAH, including territory described in E.O. 8367, Mar. 5, 1940; 5 FR 985. Atlanta, including territory described in T.D. 55548. Brunswick, including the territory described in T.D. 86-162.
South Central Region—New Orleans, La.	Mobile, Ala.....	The State of Alabama and that part of the State of Mississippi lying south of lat. 31° N.	MOBILE, ALA., including the territory described in T.D. 76-259. Birmingham, Ala. Gulfport, Miss. Huntsville, Ala., including the territory described in T.D. 83-196. Pascagoula, Miss., including territory described in T.D. 86-68.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	New Orleans, La..	The States of Tennessee, Arkansas, and Louisiana, and that part of the State of Mississippi lying north of lat. 31° N..	NEW ORLEANS, LA., including territory described in T.D. 84-126. (The ports of New Orleans, Baton Rouge, and Gramercy, consolidated for purposes of the navigation laws. See T.D. 86-177.) Baton Rouge, La. (T.D. 84-126). Chattanooga, Tenn., including territory described in T.D. 84-126. Gramercy, La., including territory described in T.D. 82-93. Greenville, Miss., including the territory described in T.D. 84-126. Knoxville, Tennessee, including territory dexcribed in T.D. 84-126. Lake Charles, La. (E.O. 5475, Nov. 3, 1930), including territory described in T.D. 54137; T.D. 84-89. Little Rock-North Little Rock, Ark., including territory described in T.D. 84-126. Memphis, Tenn., including territory described in T.D. 84-126. Morgan City, La., including territory described in T.D. 84-126. Nashville, Tenn., including territory described in T.D. 84-126. Shreveport-Bossier City, La., including the territory described in T.D. 86-145. Vicksburg, Miss., including territory described in T.D. 84-126.
Southwest Region—Houston, Tex.	Houston-Galveston, Texas.	That part of the State of Texas lying south of lat. 32° N. and that part of the State of Texas lying east of long. 97° W. except the territory included in the Port Arthur district.	HOUSTON-GALVESTON, the territory lying within the corporate limits of both Houston and Galveston and the remaining territory in Harris and Galveston Counties (T.D. 81-160, 82-15), Corpus Christi (E.O. 8288, including territory described in T.D. 78-130), Freeport (E.O. 7632), Port Lavaca-Point Comfort (T.D. 56115).
	Laredo, Tex.....	That part of the State of Texas lying west of long. 97° W. longitude and east of the Pecos River except that territory included in the Houston and Galveston districts.	LAREDO. Brownsville, including territory described in T.D. 79-254. Del Rio. Eagle Pass. Hidalgo (T.D. 85-164). Progeso (T.D. 85-164). Rio Grande City. Rome (E.O. 4830, Mar, 14, 1926). San Antonio.
	El Paso, Tex	That part of the State of Texas lying west of the Pecos River and the States of New Mexico.	EL PASO, TEX. (T.D. 54407), including the territory described in T.D. 78-221. Albuquerque, N. Mex., including the territory described in T.D. 74-304. Columbus, N. Mex. Fabens, Tex. (E.O. 4869, May 1, 1928). Presidio, Tex. (E.O. 2702, Sept. 7, 1917).
	Dallas/Fort Worth, Tex.	The State of Oklahoma, and those parts of the State of Texas lying north of lat. 32° N., and within the area north of lat. 30° N., west of 97° W. long and east of 99° W. long.	DALLAS/FORT WORTH, TEX. (T.D. 73-297) (T.D. 79-232) (T.D. 81-170). Amarillo, Tex. (T.D. 75-129). Austin, Tex. (T.D. 81-170). Lubbock, Tex. (T.D. 76-79). Oklahoma City, Okla., including territory described in T.D. 66-132. Tulsa, Okla. (T.D. 69-142).

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Port Arthur, Tex...	That part of the State of Texas from Sabine Pass north along the State line to the north boundary line of Shelby County; west to the Neches River; down the western shore of said river to the north boundary of Jefferson County; westerly along said boundary to the east boundary of Liberty County; south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border..	
	Nogales, Ariz	The State of Arizona.....	NOGALES, including the territory described in T.D. 77-285. Douglas, including territory described in E.O. 9382, Sept. 25, 1943; 8 FR 13083. Lukeville (E.O. 10088, Dec. 3, 1949; 14 FR 7287). Naco. Phoenix (T.D. 71-103). San Luis (E.O. 5322, Apr. 9, 1930). Sassabe (E.O. 5608, Apr. 22, 19310.
Pacific Region—Los Angeles, Calif	Los Angeles, Calif.	That part of the State of California lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, except the counties of San Diego and Imperial and that part of the State of Jevada comprising Chark County.	LOS ANGELES-LONG BEACH, CALIF., including territory described in T.D. 78-130. Las Vegas, Nev., the territory described in T.D. 79-74. Port San Luis, Calif.
	San Francisco, Calif.	That part of the State of California lying north of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, and the State of Nevada, except Clark County.	SAN FRANCISCO-OAKLAND, CALIF., including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton (T.D. 82-9). Eureka, Calif. Fresno, Calif., including the territory described in T.D. 74-18. Reno, Nev., including the territory described in T.D. 73-56.
	San Diego, Calif ..	The counties of San Diego and Imperial in the State of California.	SAN DIEGO (T.D. 85-163). Andrade (E.O. 4780, Dec. 13, 1927). Calexico. Tecate (E.O. 4780, Dec. 13, 1927).

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Honolulu, Hawaii.	The State of Hawaii	HONOLULU (T.D. 53514). Hilo. Kahului. Nawiliwili-Port Allen (E.O. 4385, Feb. 25, 1926), including the territory described in T.D. 56424.
	Portland, Oreg	The State of Oregon, the State of Idaho below 47° latitude, and the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean. (T.D. 85-22).	COLUMBIA-SNAKE CUSTOMS DISTRICT, PORTLAND, OREGON Astoria (including territory described in T.D. 73-338). Boise, Idaho (Pub. L. 98-573 T.D. 85-22). Coos Bay, Oreg. (E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 1945; 10 FR 3173). Longview (including territory described in T.D. 73-338). Newport, Oreg.
	Seattle, Wash	The State of Washington except for the counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean. (T.D. 85-22).	PUGET SOUND (Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, Tacoma), including the territory described in T.D. 83-146. Aberdeen, including territory described in T.D. 84-90. Blaine (E.O. 5835, Apr. 13, 1932). Boundary (T.D. 67-65). Danville. Ferry. Frontier (T.D. 67-65). Laurier. Lynden (E.O. 7632, June 15, 1937; 2 FR 1042). Metaline Falls (E.O. 7632, June 15, 1937; 2 FR 1042). Nighthawk. Oroville (E.O. 5206, Oct. 11, 1929). Point Roberts, including the territory described in T.D. 78-272. Spokane. Sumas.
	Anchorage, Alaska.	The State of Alaska	ANCHORAGE (T.D. 55295, T.D. 68-50). Alcan (T.D. 71-210). Dalton Cache (T.D. 79-74). Fairbanks (E.O. 8064, Mar. 9, 1939; 4 FR 1191). Juneau. Ketchikan, including territory described in T.D. 74-100. Sitka, including territory described in T.D. 55609. Skagway. Valdez, including territory described in T.D. 79-201. Wrangell, including territory described in T.D. 56420.

§ 101.4 Entry and clearance of vessels at Customs stations.

(a) *Entry at Customs station.* A vessel shall not be entered or cleared at a Customs station, or any other place that is not a port of entry, unless entry or clearance is authorized by the district director for the district in which such station or place is located pursuant to the provisions of § 447, Tariff Act of 1930, as amended (19 U.S.C. 1447).

(b) *Authorization to enter.* Authorization to enter or be cleared at a Customs station shall be granted by the district director for the district in which such station or place is located provided the district director is notified in advance of the arrival of the vessel concerned and the following conditions are met:

(1) Such Customs supervision as may be necessary can be provided.

(2) All applicable Customs and navigation laws and regulations are complied with.

(3) The owner, master or agent of a vessel sought to be entered at a Customs station reimburses the Government for the salary and expenses of the Customs officer or employee stationed at or sent to such Customs station or other place which is not a port of entry for services rendered in connection with the entry or clearance of such vessel, and

(4) Except as otherwise provided by these regulations, the Government is reimbursed by the interested parties for the expenses, including any per diem allowed in lieu of subsistence but not the salary of a Customs officer or employee for services rendered in connection with the entry or delivery of merchandise. **[TDs 73-123, 78-130.]**

(c) *Customs stations designated.* The Customs stations and the ports of entry having supervision thereof are listed below: **[TDs 78-272, 79-74, 79-232, 81-72, 82-93, 82-143, 83-177, 83-253, 85-22, 86-71, 87-28, 87-117, 87-123, 88-35.]**

District	Customs stations	Port of entry having supervision
Portland, Maine.	Bucksport, Maine	Belfast.
	Coburn Gore, Maine	Jackman.
	Easton, Maine	Fort Fairfield.
	Forest City, Maine	Houlton.
	Hamlin, Maine	Van Buren.
	Knoxford Line (Mars Hill)	Bridgewater.
	Monticello, Maine	Houlton.
	Orient, Maine	Do.
St. Albans, Vt.	Beebee Plaines, Vt	Derby Line.
	Canaan, Vt	Beecher Falls.
	East Richford, Vt	Richford.
	Newport, Vt	Derby Line, Vt.
	North Troy, Vt	Derby Line.
	Pittsburg, N.H	Beecher Falls.
	West Berkshire, Vt	Richford.
Boston, Mass.	Provincetown, Mass	Plymouth.
Ogdensburg, N.Y.	Cannons Corners, N.Y	Mooers.
	Churubusco, N.Y	Trout River, N.Y.
	Jamieson's Line, N.Y	Trout River.
Philadelphia, Pa.	Atlantic City, N.J	Philadelphia.
	Lewes, Del	Do.
	Port Norris, N.J	Do.
	Tuckerton, N.J	Do.
Baltimore, Md.	Salisbury, Md	Baltimore.
Miami, Fla	Fort Pierce, Fla	West Palm Beach.
Tampa, Fla	Green Cove Springs, Fla	Jacksonville.
Mobile, Ala	Biloxi, Miss	Mobile.
New Orleans, La.	Galliano, La	Morgan City.
	Houma, La	Do.
Dallas/Fort Worth, Tex.	Muskogee, Okla	Tulsa.
Laredo, Tex	Amistad Dam, Tex	Del Rio.
	Falcon Dam, Tex	Roma.
	Los Ebanos, Tex	Rio Grande City.
El Paso, Tex.	Antelope Wells, N. Mex. (Mail: Hachita, N. Mex.).	Do.
	Fort Hancock, Tex	Fabens Columbus.
	Marathon, Tex	El Paso.
Nogales, Ariz.	Tucson, Ariz	Nogales.
San Diego, Calif.	Campo, Calif	Tecate.
	Otay Mesa, Calif	San Diego.
	San Ysidro, Calif	Do.
Los Angeles, Calif.	Port Hueneme, Calif	Los Angeles.
San Francisco, Calif.	Monterey, Calif	San Francisco.
Anchorage, Alaska.	Barrow, Alaska	Fairbanks.
	Dutch Harbor, Alaska	Anchorage.
	Eagle, Alaska	Alcan.
	Fort Yukon, Alaska	Fairbanks.
	Haines, Alaska	Dalton Cache.
	Hyder, Alaska	Ketchikan.
	Kaktovik (Barter Island), Alaska	Fairbanks.
	Kenai (Nikiski) Alaska	Anchorage.
	Kodiak, Alaska	Do.
	Northway, Alaska	Alcan.
	Pelican, Alaska	Juneau.
	Petersburg, Alaska	Wrangell.
Great Falls, Mont.	Colorado Springs, Colo	Denver.
	Wild Horse, Mont	Great Falls.
	Willow Creek, Mont	Do.
Pembina, N. Dak.	Grand Forks, N. Dak	Pembina.
	Lancaster, Minn	Noyes.
	Minot, N. Dak., International Airport.	Pembina.
	Oak Island, Minn	Warroad.
Duluth, Minn	Crane Lake, Minn	Duluth, Minnesota/ Superior, Wisconsin.
	Ely, Minn	Grand Portage.
	Akron, Ohio	Cleveland.
	Fairport, Ohio	Do.
	Fort Wayne, Ind	Indianapolis.
Cleveland, Ohio.	Lorain, Ohio	Toledo/ Sandusky.

District	Customs stations	Port of entry having supervision
	Marblehead-Lakeside, Ohio	Toledo/ Sandusky.
	Put-in-Bay, Ohio	Do.
Detroit, Mich....	Alpena, Mich	Saginaw-Bay City.
	Detour, Mich	Sault Ste. Marie.
	Escanaba, Mich	Do.
	Grand Haven, Mich	Muskegon.
	Houghton, Mich	Sault Ste. Marie.
	Marquette, Mich	Do.
	Rogers City, Mich	Saginaw-Bay City.

(d) *Temporary Customs stations.* Customs stations may be designated for a temporary time only, to provide Customs facilities where needed because of certain large-scale operations. Because these designations change from time to time they are not listed. However, current information as to the existence of such stations in any district may be obtained from the district director.

§ 101.5 Customs preclearance offices in foreign controls.

Listed below are the preclearance offices in foreign countries where U.S. Customs officers are stationed and the Customs officers under which they function: **[TDs 78–275, 81–73, 84–149, 87–66.]**

Country	Customs office	Customs officer having supervison
The Bahamas	Freeport	Regional Commissioner, Miami, Fla.
	Nassau	Do.
Bermuda	Kindley Field	Do.
Canada	Calgary, Alberta	Regional Commissioner, Chicago, Illinois.
	Edmonton, Alberta	Do.
	Montreal, Quebec	Do.
	Toronto, Ontario	Do.
	Vancouver, British Columbia	Do.
	Winnipeg, Manitoba	Do.

§ 101.6 Hours of business.

Except as specified in paragraphs (a)–(g) of this section, each Customs office shall be open for the transactions of general Customs business between the hours of 8:30 a.m. and 5 p.m. on all days of the year:

(a) *Saturdays, Sundays and national holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive order, Customs offices shall be closed on the following national holidays:

(1) The first day of January.
(2) The third Monday of February.
(3) The last Monday of May.
(4) The fourth day of July.
(5) The first Monday of September.
(6) The second Monday of October.
(7) The eleventh day of November.
(8) The fourth Thursday of November.
(9) The twenty-fifth day of December.

If a holiday falls on Saturday, the day immediately preceding such Saturday will be observed. If a holiday falls on Sunday, the day immediately following such Sunday will be observed. (5 U.S.C. 6103(b)(1)); (E.O. No. 11582, January 1, 1971; 34 FR 2957; 3 CFR Ch. 11)

(b) *Local conditions requiring different hours.* If, because of local conditions, different but equivalent hours are required to maintain adequate service, such hours shall be observed provided the Commissioner of Customs approves them and provided further that a notice of business hours is prominently displayed at the principal entrance and in each public room of the Customs office.

(c) *Fixing of hours.* At each port or station where there is no full-time Customs employee, the appropriate district director shall, with the approval of the regional commissioner of Customs, fix the hours during which the Customs office will be open for the transaction of general Customs business. Notice of such hours shall be prominently displayed at the principal entrance of the office.

(d) *State and local holidays.* Each Customs office shall be open for the transaction of business on all state and local holidays occurring on days other than Saturdays, Sundays, and national holidays listed in paragraph (a) of this section. The appropriate principal field officer may excuse any employee(s) without charge to leave when a state or local holiday interferes with the performance of his work in a Customs office.

(e) *Services performed outside a Customs office.* Customs services required to be performed outside a Customs office shall be furnished between the hours of 8 a.m. and 5 p.m. (or between the corresponding hours at ports where different but equivalent hours are required for the maintenance of adequate service and are approved by the Commission of Customs) on all days when the Customs office is open for the transaction of general Customs business. The regional commissioner of Customs shall, from time to time, and upon reasonable advance notice to the principal local officer concerned, issue instructions for the furnishing of such services on Saturdays.

(f) *Customs services not within prescribed hours.* Where there is a regularly recurring need for Customs services outside the hours prescribed in paragraphs (a)–(e) of this section and the volume and duration of the required services are uniformly such as to require, of themselves or in immediately consecutive combination with other essential Customs activities of the port, the full time of one or more Customs employees, the necessary number of regular tours of duty to furnish such services on all days of the year except Sundays and national holidays may be established with the approval of the Commissioner of Customs.

(g) *Customs services furnished private interests.* Other than as specified in this section. Customs services shall be furnished private interests only in accordance with the provisions of § 24.16 of this chapter.

§ 101.7 Customs seal.

(a) *Design.* According to the design furnished by the Department of the Treasury, the Customs seal of the U.S. shall consist of the seal of the Department of the Treasury surrounded by an outer circle in which appear the words "Treasury" at the top and "U.S. Customs Service" at the bottom.

(b) *Use of the Customs seal.* The Customs seal currently in official use, including the dies, rolls, plates, and like devices now in the possession of the Bureau of Engraving and Printing, shall continue to be equally effective as the official seal of the U.S. Customs Service and shall continue to be so used by each Customs officer and employee having possession of the seal until that particular device requires replacing and is replaced. Use of the U.S. Customs seal shall be restricted in the following manner:

(1) The Customs seal of the U.S. shall be impressed upon all official documents requiring the impress of a seal. It shall be impressed upon all marine documents and landing certificates, certificates of weight, gauge, or measure, and similar classes of documents for outside interests.

(2) The impress of the seal is not necessary on documents passing within the Customs Service nor shall the seal be used in the manner of a notary seal to indicate authority to administer oaths.

§ 101.8 Identification cards.

Each Customs employee shall be issued an appropriate identification card with that employee's photograph and signature, signed by the appropriate issuing officer.

PART 103—AVAILABILITY OF INFORMATION

Sec.

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Authority: R.S. 251, as amended, Sec. 624, 46 Stat. 759, sec. 501, 65 Stat. 290; 5 U.S.C. 301, 552, 19 U.S.C. 66, 1624, 31 U.S.C. 483a. Additional authority and statutes interpreted or applied are cited in the text or in parentheses following the sections affected.

Source: T.D. 73-310, 38 FR 31167, Nov. 12, 1973, T.D. 81-168, 46 FR 32564, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part contains regulations implementing the public information provisions of the Freedom of Information Act, as amended (5 U.S.C. 552). For the purpose of this part the Office of the Chief Counsel is considered to be a part of the U.S. Customs Service. The regulations supplement the regulations of the Department of the Treasury concerning public access to records, which are found in 31 CFR Part 1 and which are applicable to all constituent units of the Department, including the U.S. Customs Service. In the event of any inconsistency between these regulations and those of the Department of the Treasury, the Department of the Treasury regulations shall govern. Included in this part are the procedures by which the public may obtain access to records maintained by the U.S. Customs Service. The regulations provide a uniform schedule of fees for the search and duplication of Customs opinions and rulings, orders made in the adjudication of cases, and other Customs records and documents. In addition, the part includes provisions governing the release of certain information to the press and the giving of testimony or the production of Customs documents in court proceedings. Persons seeking information or records may find it useful to consult with either the Chief, Disclosure Law Branch, U.S. Customs Service, Washington, D.C. 20229, the Public Information Division at Headquarters, the appropriate regional commissioner of Customs, or the public information officer in the appropriate Customs regional office, before invoking the formal procedures set forth in this part. **[TD 70-134.]**

§ 103.1 Public reading rooms.

Each office listed below will maintain a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and this part may be inspected and copied: **[TDs 76-120, 76-146, 83-209.]**

United States Customs Service (Headquarters)

1301 Constitution Avenue, NW., Washington, D.C. 20229

Northeast Region—Boston

100 Summer Street, Suite 1819, Boston, Massachusetts 02110

New York Region—New York

6 World Trade Center, New York, New York 10048

North Central Region—Chicago

Room 1501, 55 East Monroe Street, Chicago, Illinois 60603

Southeast Region—Miami

99 S. E. 5th Street, Miami, Florida 33131

South Central Region—New Orleans

Canal-LaSalle Building, Rm. 302, 423
Canal St., New Orleans, Louisiana 70130

Southwest Region—Houston

5850 San Felipe, Houston, Texas 77057

Pacific Region—Los Angeles

New Federal Building, 300 N. Los Angeles
Street, Los Angeles, California 90012.

Region IX—***Chicago***

Room 1501, 55 East Monroe Street, Chicago, Ill. 60603.

The reading rooms are open to the public during regular business hours unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material will be charged in accordance with § 103.10.

§ 103.2 Information available to the public.

(a) *General.* The Freedom of Information Act, as amended (5 U.S.C. 552), provides for access to information and records developed or maintained by Federal agencies. Subject only to the exemptions set forth in § 103.12, the public generally or any individual member is entitled to information or records which are described in paragraph (b) of this section and which are in the possession of the U.S. Customs Service. Access to that information is governed by the regulations in this part.

(b) *Three categories of information available.* Generally, 5 U.S.C. 552 divides agency information into three major categories and provides methods by which each category is available to the public. The three major categories, for which the disclosure requirements of the U.S. Customs Service are set forth in this part, are as follows:

(1) Information required to be published in the ***Federal Register*** (see § 103.3).

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 103.4).

(3) Information required to be made available to any member of the public upon specific request (see § 103.5).

§ 103.3 Publication of information in the *Federal Register.*

(a) *Requirements.* Subject to the application of the exemptions described in § 103.12 and subject to the limitations provided in paragraph (b) of this section, the U.S. Customs Service is required, by 5 U.S.C. 552(a)(1), to separately state, publish and keep current in the ***Federal Register*** for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) A statement of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by it.

(5) Each amendment, revision, or repeal of matters referred to in subparagraphs (1) through (4) of this paragraph.

(b) *Limitations.*—(1) *Incorporation by reference in the* ***Federal Register.*** Matter reasonably available to an affected class of persons, whether published by a private organization or an agency of the U.S., is published in the ***Federal Register*** for purposes of paragraph (a) of this section when it is incorporated by reference in the ***Federal Register*** with the approval of the Director of the ***Federal Register***. Any matter which is incorporated by reference must be set forth in the privately- or publicly-printed document substantially in its entirely and not merely summarized or printed as a synopsis. There can be no incorporation by reference in the ***Federal Register*** of any matter where only a few persons having a special working knowledge of the activities of the U.S. Customs Service are familiar with its location and scope. The provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20 control any incorporation of matter by reference.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the ***Federal Register,*** that person is not required in any manner to resort to, or be adversely affected by, that matter if it is not published or incorporated by reference. That is, any matter which imposes an obligation and which is not published or incorporated by reference can not adversely change or affect a person's rights.

§ 103.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions described in § 103.12, the U.S. Customs Service is required, by 5 U.S.C. 552(a)(2) and §§ 174.32 and 177.10 of this chapter, to make available for public inspection and copying or, in the alternative, promptly publish and offer for sale, the following information:

(1) Final opinions and orders, including concurring or dissenting opinions, made in the adjudication of cases;

(2) Within 120 days of issuance, any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) issued under the Tariff Act of 1930, as amended, with respect to any Customs transaction;

(3) Those statements of policy and interpretations which have been adopted by the U.S. Customs Service but are not published in the ***Federal Register;*** and

(4) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* The U.S. Customs Service is required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying those current indexes which identify any item described in paragraphs (a)(1) through (3) of this section that is issued, adopted, or promulgated after July 4, 1967, and that is required to be made available for public inspection or published. Unless the Commissioner determines by an order published in the ***Federal Register*** that publication is unnecessary and impracticable, these indexes are published on a quarterly or more frequent basis ajd are available fkr purchase at each of the public reading rokms histed in § 103.1, at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish kr make available** No matter(described in paragraphs (a)(1) through (3) of this section which is required by this section to be made available for public inspection or published, may be relied upon, used(or cited as precedent by the U*S. Customs Service against a party, other than an agency, unless that party has actual and timely notice of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this section. This paragraph applies only to matters which have precedential significance and does not apply to matters which have been made available pursuant to § 103.3.

(d) *Deletion of identifying details.* To prevent an unwarranted invasion of personal privacy, in accordance with 5 U.S.C. 552(a)(2), identifying details contained in any matter described in paragraphs (a)(1) through (3) of this section are deleted before making that matter available for inspection or publication. However, in every case where identifying details are deleted, the basis for the deletion is explained in writing, giving specific reasons for the deletion and citing the applicable provision of 5 U.S.C. 552 and § 103.12, in an attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* The U.S. Customs Service has available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a)(1) through (3) of this section which are required by paragraph (a) to be made available for public inspection or published in the current indexes. Facilities are provided whereby a person may inspect and obtain copies of the material. There is no fee for access to materials, but a fee is charged in accordance with § 103.10 for a copy of any material provided.

§ 103.5 Specific request for records.

(a) *In general.* Except with respect to the records made available under §§ 103.3 and 103.4, but subject to the application of the exemptions described in § 103.12, the U.S. Customs Service is required, by 5 U.S.C. 552(a)(3), upon a request for reasonably-described records that conforms in every respect to the rules and procedures of this part, to

make the requested records promptly available to the requester. A request or an appeal from the initial denial of a request which does not comply with the requirements set forth in this part is not subject to the time limits of §§ 103.6, 103.7, and 103.8 until amended so as to comply. Nevertheless, every reasonable effort will be made to answer each request within the applicable time limits or, if necessary, to promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this part. This section applies only to existing records which are in the possession or control of the U.S. Customs Service. There is no requirement that records be created or data be processed in other than the existing format in order to answer a request for records.

(b) *Requests for records not in control of the U.S. Customs Service—(1) Referral of request.* Where the request is for a record in the possession of, under the control of, or created by a constituent unit of the Department of the Treasury other than the U.S. Customs Service, the appropriate Customs officer shall transfer the request to the appropriate constituent unit and notify the requester of that transfer. Forwarding a request to another constituent unit is not a denial of access within the meaning of these regulations. If the U.S. Customs Service receives a request forwarded from another constituent unit of the Department of the Treasury, the time limits for response set forth in §§ 103.6(b) and 103.8(a) commence upon receipt of the request by the Disclosure Law Branch, U.S. Customs Service. If the U.S. Customs Service receives a request for a record that is not in the possession or control of any constituent unit of the Department of the Treasury, the appropriate Customs officer shall return the request to the sender with an explanation of that fact.

(2) *Request for advice.* If the Customs Service has a copy of a requested unclassified record that was created by a Department or agency other than a constituent unit of the Department of the Treasury, the appropriate Customs officer shall ask that Department or agency for its advice on the release of the record. The appropriate Customs officer shall advise the other Department or agency that, in the absence of timely guidance from it, the U.S. Customs Service will proceed to make its own determination in accordance with this part. If it becomes necessary to respond to a requester because of the time limits set forth in §§ 103.6(b) and 103.8(a) without the advice of the other Department or agency, the appropriate Customs officer shall make the determination in accordance with this part and advise the requester accordingly. If the appropriate Customs officer denies access to the record under one of the exemptions set forth in § 103.12, that officer shall advise the requester of the right to appeal the denial and of the possibility of sending a request for the record directly to the originating Department or agency. If a requester appeals from a denial to the U.S. Customs Service, the appropriate Customs officer shall ask the originating Department or agency for timely advice on whether to release the records Nevertheless, the ultimate decision on the appeal from a denial of access to a record rests with the Director, Office of Regulations and Rulings, as set forth in § 103.7.

(3) *Classified records.* If the Customs Service has a copy of a requested record created by a Department or agency other than a constituent unit of the Department of the Treasury, and that record is classified or contains both classified and unclassified material, the request shall be referred to the originating Department or agency for a direct response. The requester shall be notified immediately of the referral. Such referral shall not constitute a denial of the request and no appeal rights accrue to the requester.

(c) *Form of request.* Although no standard form is prescribed for a request, in order to be subject to the provisions of this section and §§ 103.6 through 103.9, a request for records must—

(1) Be made in writing and signed by the person making that request;

(2) State that it is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), or these regulations, and have conspicuously printed on the face of the envelope the words "Freedom of Information Act Request" or "FOIA Request";

(3) Be addressed to the appropriate office or officer of the U.S. Customs Service, as set forth in paragraph (d) of this section;

(4) Reasonably describe the records in accordance with paragraph (e) of this section.

(5) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted;

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with § 103.10, or request that such fees be reduced or waived and state the justification for such request (see § 103.10(d)).

Where the initial request, rather than stating a firm agreement to pay the fee ultimately determined in accordance with § 103.10, places an upper limit on the amount the requester agrees to pay and that upper limit is likely to be lower than the estimated fee, or where the requester asks for an estimate of the fees to be charged, or if the fees are expected to exceed $50, the appropriate Customs officer shall promptly advise the requester of the estimated fee due and ask the requester to agree to pay that amount. Where the initial request includes a request for reduction or waiver of fees, the appropriate Customs officer shall determine whether to grant the request for reduction or waiver in accordance with § 103.10(d) and notify the requester of the decision. If the officer decides to charge the requester for all or part of the fees normally due, the officer shall ask the requester to agree to pay the amount so determined. The requirements of this paragraph are not met until the requester agrees, in writing, to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due.

(d) *To whom requests for records should be addressed—*(1) *Headquarters.* Requests made by mail for records maintained at the Headquarters of the U.S. Customs Service should be addressed to "Freedom of Information Act Request," U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Requests may be delivered personally to the Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C.

(2) *Regional offices.* A person shall request records or information maintained in a field office of the U.S. Customs

Service by either mailing or personally delivering the request to the regional commissioner of Customs of the region in which the field office is located. The addresses of the regional commissioners are listed in § 103.1.

(e) *Reasonable description of records.* A request for records must describe the records in reasonably sufficient detail to enable a Customs officer who is familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the U.S. Customs Service. While no specific formula for a reasonable description of a record can be established, the requirement is usually satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, a requester should furnish any additional information which will more clearly identify the requested records. If a request does not reasonably describe the records being sought, the appropriate Customs officer shall ask the requester to refine the request. If necessary a requester may be granted a conference with knowledgeable Customs personnel. The requirement for a reasonable description is not a device for improperly withholding records from the public.

(f) *Date of receipt of request.* A request for records is considered to have been received for purposes of this part on the later of the dates on which—

(1) The requirements of paragraph (c) of this section have been satisfied; and, where applicable,

(2) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined to be due in accordance with § 103.10; or

(3) The fees have been waived in accordance with § 103.10(d); or

(4) Payment in advance has been received from the requester.

A Customs officer or employee who receives a request for records and a separate agreement to pay, or a letter transmitting prepayment, or who issues a final notification of waiver of fees, shall stamp the date of receipt or dispatch by the responsible office on the material. The latest of those dates is the date of receipt of the request. As soon as the date of receipt has been established, the appropriate Customs officer shall acknowledge receipt and inform the requester of the title of the Customs officer who is responsible for acting on the request.

(g) *Search for record requested.* Upon the receipt of a request, the appropriate Customs officer shall attempt to identify and locate the requested records. With respect to records maintained in computerized form, a search for a record includes services functionally analogous to searches for records which are maintained in a conventional form. However, Customs personnel are not required to tabulate or compile information for the purpose of creating a record. Only records in existence at the time of the receipt of the request will be treated as falling within the scope of the request and no request for the continuing production of documents created after receipt of the request will be honored.

(h) *"Request for record" defined.* For purposes of uniformity in recordkeeping a "request for a record" is defined as a written request for a record of the U.S. Customs Service which has not been published in the ***Federal Register***, the ***Customs Bulletin***, by press release, or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the request makes reference to the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations.*

(1) *Regional offices.* The appropriate regional commissioner of Customs shall make any initial determination on a request for a record which is maintained in that region.

(2) *Headquarters.* For records located at Customs Service Headquarters, the initial determination to grant or deny a request shall be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. In the event the request relates to records which are maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner or Comptroller, as appropriate, having responsibility for that office.

(b) *Time limit for initial determinations.* The time limit for making an initial determination to grant or deny a request for records, including the time for notifying the requester of that determination, is 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request (see § 103.5(f)), unless the designated officer invokes an extension pursuant to § 103.8(a) or the requester otherwise agrees to an extension.

(c) *Grant of request.* If the appropriate Customs officer grants a request, and if the requester wants a copy of the requested records, that officer shall mail a copy of those records to the requester together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. If a requester wants to inspect the record, the appropriate Customs officer who grants the request shall send written notice to the requester stating the time and place of inspection and the amount of any fee involved in the request. In such a case, the appropriate Customs officer shall make the record available for inspection at the time and place stated, but in a manner so as not to interfere with its use by the U.S. Customs Service or to exclude other persons from making an inspection. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The requester is not allowed to remove a record from the inspection room. If, after making inspection, the requester wants a copy of all or a portion of the requested record, the appropriate Customs officer shall supply the desired copy upon payment of the established fee prescribed in § 103.10.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notification shall contain (1) the physical location of the requested records, (2) the applicable exemption(s) and reason for not granting the request, (3) the name and title or position of the Customs officer who denied the request, (4) advice on the right to administrative appeal in accordance with § 103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot be located and evaluated within the initial 10-day period or the extension period allowed under § 103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records.

However, that officer shall also notify the requester of the facts and inform the requester that he or she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

§ 103.7 Administrative appeal of initial determination.

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the Director, Office of Regulations and Rulings, within 35 days after the date of notification described in § 103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

(b) *Form of appeal.* The Administrative appeal shall—

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words "Freedom of Information Act Appeal";

(3) Reasonably describe, in accordance with § 103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the Director, Office of Regulations and Rulings, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Director, Office of Regulations and Rulings, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The Director shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the Director is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to § 103.8(a)), the Director shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in § 103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a U.S. district court on the appellant's request.

§ 103.8 Time extensions.

(a) *Ten-day extension.* In unusual circumstances, the Customs officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§ 103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the Director, Office of Regulations and Rulings, who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, "unusual circumstances" means at least one of the following:

(1) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the Customs officer to whom the request is made is located.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request, among two or more constituent units within the Department of the Treasury, or within offices of the U.S. Customs Service (other than the legal staff or Public Affairs Division) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this subparagraph.

(b) *Extension by judicial review.* If the U.S. Customs Service fails to comply with the time limitations specified in §§ 103.6 and 103.7 and the requester commences an action under § 103.9, the court in which the suit was initiated may retain jurisdiction and allow the U.S. Customs Service additional time to review its records, if the Customs Service shows the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

§ 103.9 Judicial review.

(a) *Failure to comply with time limitations.* If the U.S. Customs Service fails to comply with the time limitations specified in §§ 103.6, 103.7 or 103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review.* If a request for records is denied upon appeal pursuant to § 103.7, or if no determination is made within the 10-day or 20-day periods specified in §§ 103.6 and 103.7, respectively, together with an extension pursuant to § 103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a U.S. district court in the district (1)

in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the U.S. The Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the officer or employee or the representative of that officer or employee.

§ 103.10 Fees for services.

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circumstances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d) of this section, fees are charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge*—(1) *Certain classes of records.* The Commissioner of Customs or any of the Commissioners designees may determine, under the rulemaking procedures of 5 U.S.C. 553, which classes of records under their control may be provided to the public without charge, or at a reduced charge.

(2) *Records provided to government units.* Normally, in accordance with paragraph (d)(2)(ii) of this section, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(d) *Waiver or reduction of fees*—(1) *Records unavailable or exempt.* Fees may be waived or reduced at the discretion of the Customs officer who determines the availability of records, if the record is not found or is exempt from disclosure.

(2) *Request for waiver or reduction of fees.* Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the Customs officer who determines whether to release the record. A request for a waiver or reduction of fees must be in writing. The appropriate Customs officer shall waive or reduce a fee if the officer determines either that—

(i) The records are being requested by, or on behalf of, an individual who in writing, under penalty or perjury, demonstrates indigency to the satisfaction of the officer and that compliance with the request does not constitute an unreasonable burden on the U.S. Customs Service; or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(3) *Appeal from denial of request.* An appeal from a denial of a request for waiver or reduction of fees is decided under the criteria set forth in subparagraph (2) of this paragraph by the Director, Office of Regulations and Rulings. An appeal shall be in writing and mailed to the Director within 35 days of the denial of the initial request for waiver or reduction. An appeal under this paragraph is entitled to a prompt decision.

(e) *Avoidance of unexpected fees.* In order to protect a requester from unexpected fees, a requester is required to state in the request an agreement to pay the fees determined in accordance with paragraph (g) of this section or to state an acceptable upper limit on the cost of processing the request. If the fee for processing the request is estimated to exceed that limit, or if the requester has failed to state a limit and the cost is estimated to exceed $50 and there is no decision to waive or reduce the fees, the appropriate Customs office shall—

(1) Inform the requestor of the estimated costs;

(2) Extend an offer to the requester to confer with Customs personnel in an attempt to reformulate the request in a manner which will reduce the fee and still meet the needs of the requester, and

(3) Inform the requester that the running of the time period within which a determination on the request must be made is suspended until the request is reformulated in manner to reduce the cost or until the requester pays or agrees to pay the estimated cost.

(f) *Form of payment.* (1) A requester shall pay by a check or money order that is payable to the order of the U.S. Customs Service.

(2) If the estimated cost exceeds $50, the requester may be required to enter into a contract for the payment of actual costs, as determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amount to be charged for specified services.* A fee for a service performed is imposed and collected as set forth in this paragraph. The Commissioner of Customs or the Commissioner's designee may set an appropriate fee for any service not described below. These extraordinary fees are imposed and collected pursuant to 31 U.S.C. 483a, subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) The charge for photocopies per page up to 81/2" x 14" is at the rate of $0.15 each.

(ii) The charge for photographs, films and other materials is their actual cost. The Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual

cost of duplication charged by the private contractor. No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of $0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is $10.00 for each hour or fraction thereof. If a computer search is required because of the nature of the records sought and the manner in whichs the records are stored, the fee is $10.00 for each hour or fraction thereof of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate rather then examine the records, is the actual cost of the transportation. [TD 84-149.]

§ 103.11 Specific Customs Service records subject to disclosure.

(a) *Administrative staff manuals and instructions.* Except as exempted by § 103.12, all administrative staff manuals and instructions to staff that affect any member of the public, and indexes thereto, are available for public inspection and copying in the Customs Service public reference facilities (see § 103.1), including the following:

Forms Catalog. Customs and other agency forms currently available from the Customs Service.

Legal Precedent Retrieval System. The directory is a listing by selected keywords of all classification rulings issued since early 1974 that affect a substantial volume of imports or transactions or are of general interest or importance, and of all published classification rulings issued since August 31, 1963, including classification decisions, and classification rulings circulated within the Customs Service by the Customs Information Exchange and the Office of Regulations and Rulings. The directory also contains limited information on decisions and rulings pertaining to entry, value, drawback, marking, country of origin, and vessel repairs. The directory is maintained on microfiche and is continually updated. Duplicate microfiche are available for 15¢ each, through subscription or in individual sets. The costs of a set will depend upon the number of microfiche it contains.

Fines, Penalties, and Forfeitures Handbook. Collects in one document information relating to the total management of the fines, penalties, and forfeitures program.

Inspector Rate Book. A ready reference guide for inspection personnel. Contains an abbreviated Tariff Schedules of the United States and other reference material.

Customs Issuance System (CIS) Index. The index provides a brief description of circulars, manuals, legal rulings, decisions, and other Customs documents.

Operational Handbook of Other Agency Requirements Enforced by the U.S. Customs Service.

Customs Valuation under the Trade Agreements Act of 1979.

Fundamentals of Customs Tariff and Trade Operations Handbook. Material relating to the duties and responsibilities of import specialists: entry of merchandise, restrictions, prohibitions and other agency requirements, special trade programs, invoicing and related documentation, examination of merchandise, Customs valuation, tariff classification, liquidation, protests, and miscellaneous import specialist concerns. [TD 85-123.]

(b) *Other Custom Records.* In general, all other documents issued by the Secretary of the Treasury, the Commissioner of Customs, or other officers of the Department of the Treasury or of the U.S. Customs Service in matters administered by the U.S. Customs Service, if reasonably described, and unless exempted from disclosure under § 103.12, are available. The classes of records of the U.S. Customs Service which may be made available under this paragraph upon written request submitted in accordance with § 103.5 include, but are not limited to the following:

(1) Records relating to—(i) Comments submitted by private parties (which are not considered to include foreign governments) in response to a published notice of proposed rulemaking and of proposed changes in tariff classifiction, unless the submitter states that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is exempt from disclosure under § 103.12;

(ii) Advisory committees on Customs matters;

(iii) Rosters of licensed customhouse brokers;

(iv) Names of individual licensed customhouse brokers;

(v) Names and titles of all Customs personnel;

(vi) Performance awards;

(vii) Suggestion awards;

(viii) The administration of and decisions concerning import quotas; and

(ix) Customs laboratory methods.

(2) Decisions concerning—(i) Matters arising under the Tariff Schedules of the United States and the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(ii) Whether or not specific items, articles, or mechandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 *et seq.*), and the disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs;

(iii) The dutiable status of gifts pursuant to § 321, Tariff Act of 1930, as amended (19 U.S.C. 321);

(iv) The eligibility of vehicles used in international traffic pursuant to § 332(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), and any other instruments of international traffic generally for duty-free entry;

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor (19 U.S.C. 1307);

(vi) The entry or valuation of merchandise;

(vii) Liens in cases arising under § 564, Tariff Act of 1930, as amended (19 U.S.C. 1564);

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under § 483 or 484 (c), (h) or (i). Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484(c), (h), (i));

(ix) Trademarks, trade names copyrights, patents, and related matters;

(x) Country of origin marking requirements of § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304);

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry;

(xii) Entry of articles admitted temporarily free of duty under bond as provided in schedule 8, part 5C, Tariff Schedules of the United States and Chapter 98, Subchapter XIII HTSUS (19 U.S.C. 1202), and entry of articles admitted

temporarily free of duty under A.T.A. Carnets, as provided in § 114.22 (a) and (b) of this chapter;

(xiii) Tonnage taxes (regular, special, and nondiscriminatory) and light money;

(xiv) The entry, clearance and use of vessels and permits for them to proceed coastwise;

(xv) The regulation of vessels in the foreign, coastal fishing, and other trades of the U.S.;

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the U.S.;

(xvii) Salvage operations by vessels within the territorial waters of the U.S. (46 U.S.C. 316);

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and the remission or refund of such duties;

(xix) Requirements for entry, clearance, and use of aircraft;

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles;

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein;

(xxii) Use of protective Customs seals and labels; and

(xxiii) The itineraries of foreign vessels which had been submitted for an advisory ruling to determine whether the primary object of a contemplated voyage would be considered unlawful coastwise trade (see § 4.80a(d) of this chapter). **[89-1]**

§ 103.12 Exemptions.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

(a) *Matters kept secret pursuant to Executive Order.* Matters specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive Order (see 31 CFR Part 2).

(b) *Certain internal rules and procedures.* Information relating solely to the internal personnel rules and practices of an agency.

(c) *Matters exempt from disclosure by statute.* Information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) *Privileged or confidential information.* Trade secrets and commercial or financial information obtained from any person which is privileged or confidential. **[TDs 76-165, 76-198.]**

(e) *Certain inter-agency or intra-agency correspondence.* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(f) *Material involving personal privacy.* Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) *Certain investigatory records.* Records or information compiled for law enforcement purposes, but only to the extent that the production of such enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Certain pending criminal investigation.* Whenever a request is made which involves access to records described in paragraph (g)(1) of this section, and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Customs may, during only such times as that circumstance continues, treat the records as subject to the requirements of this Part.

(i) *Certain informant records.* Whenever informant records maintained by Customs under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, Customs may treat the records as not subject to the requirements of this Part unless the informant's status as an informant has been officially confirmed. **[TDs 87-137, 88-22.]**

§ 103.13 Segregability of records.

(a) *Reasonably segregable portions.* Where the record requested contains information which is exempt from disclosure under 5 U.S.C. 552(b) and § 103.12, the reasonably segregable portions of the record shall be made available to the requester. For purposes of this section, the term "reasonably segregable portions" means those portions of the record: (1) which are not exempt from disclosure by 5 U.S.C. 552(b) and § 103.12; (2) which, after deletion of the exempt material, still convey meaningful and nonmisleading information; and (3) from which it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the exempt portions.

(b) *Petitions by American manufacturers, producers, or wholesalers.* Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). See Part 175 of this chapter.

§ 103.14 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commerical or finaincial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press. **[TD 84–111.]**

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment.* (1) *Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, representative, attorney or official of the importer or consignee, must submit a certification (as described in subparagraph (ii) of this paragraph) claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or consignee may file a certification requesting confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall iclude the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Disclosure Law Branch, Regulations Control and Disclosure Law Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, D.C. 20229.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Disclosure Law Branch at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by Customs of the receipt of its certification of confidentiality. **[TDs 84–111, 85–123.]**

(2) Outward manifest. If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Disclosure Law Branch, Regulations Control and Disclosure Law Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, D.C. 20229.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval. **[TD 85–123.]**

(3) If any individual shall abuse the privilege granted him of examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers. **[TD 81–19.]**

§ 103.15 Sanctions for improper actions by Customs officers or employees.

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the U.S. Customs Service, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

§ 103.16 Information concerning fines, penalties, and forfeiture cases.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), district directors of Customs and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until customs action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violater, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate district director of Customs. Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in § 103.5.

§ 103.17 Testimony or the production of documents in court.

(a) *General.* In answer to a legal process or demand from a court issued on behalf of the U.S. or an officer thereof, Customs officers or employees shall produce in court, and may testify with respect to, any official Customs papers or documents demanded which are in Customs custody. When the process or demand is issued on behalf of a party other than the U.S., Customs officers or employees shall produce in court, and may testify with respect to, those papers and documents, but only to the extent that the party on whose behalf the papers or documents are demanded is permitted under these regulations to inspect or copy those papers or documents. An exception to the above two rules may be made only on the written order of the Commissioner of Customs or the Commissioner's designee. When requested, copies may be authenticated pursuant to the provisions of § 1733, title 28, United States Code.

(b) *Request of Court of International Trade.* Except as stated in § 103.12, nothing in this part precludes Customs officers or employees from producing in the Court of International Trade, and Customs papers or documents, in Customs custody, or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the U.S. information in, and permitting inspection of, Customs papers and documents requested by such counsel, nor from testifying on behalf of the U.S. or otherwise assisting such counsel in the performance of official duties. **[TD 85–90.]**

(c) *Subpoena or subpoena duces tecum.* Upon being served with a subpoena or subpoena duces tecum from a court or court officer calling for testimony or the production of papers or documents in cases not covered by paragraph (a) or (b) of this section, or in cases where the testimony or documents desired would disclose matters the disclosure of which would be contrary to these regulations, the Customs officer involved shall refer the matter to Headquarters for instructions, with a report that specifically describes the testimony or documents desired. The Customs officer involved shall include in the report his or her opinion on whether the giving of the testimony or the furnishing of the documents would disclose information not permitted to be disclosed under these regulations. That officer also shall state in what particulars, if any, the disclosure of the information and work incidental to that disclosure would interfere with the orderly conduct of Customs business. If instructions are not received prior to the date set or appearance or production of documents, or if the Commissioner of Customs or the Commissioner's designee declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the Customs officer or employee whose testimony is requested, the Customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for the refusal. If the matter has not already been referred to Headquarters for instructions, the Customs officer or employee shall advise the court or officer that it will be so referred.

(d) *In camera inspection of records.* Nothing in this section authorizes Customs officers or employees to withhold records from a court, pursuant to its order, for *in camera* inspection to determine the property of claimed exemptions to disclosure.

§ 103.18 Release of information to foreign agencies.

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

(1) ensure compliance with any law or regulation enforced or administered by Customs;

(2) administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) an action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section. **[TD 86–196.]**

PART 111—CUSTOMS BROKERS

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gn. Note 9, HTSUS), 1624, 1641.

Source: T.D. 70-134, 35 FR 9254, June 16, 1970, unless otherwise noted.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses. **[TD 86-161.]**

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms shall have the meanings indicated:

(a) *Person.* "Person" includes individuals, partnerships, associations, and corporations.

(b) *Customs broker.* "Customs broker" means a person who is licensed under this part to transact customs business on behalf of others.

(c) *Customs business.* "Customs business" means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other

charges assessed or collected by Customs upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof.

(d) *Broker.* "Broker" means "customs broker."

(e) *Treasury Department or any representative thereof.* "Treasury Department or any representative thereof" includes any office, officer, or employee of the Treasury Department, wherever located.

(f) *Records.* "Records" means those documents identified in § 162.1a of this chapter and kept as provided in § 162.1b of this chapter.

(g) *Freight forwarder.* "Freight forwarder" means a person engaged in the business of dispatching shipments on behalf of other persons for a consideration in foreign commerce between the U.S., its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments.

(h) *Officer of an association or corporation.* "Officer of an association or corporation" means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute, the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation. **[TD 86-161.]**

§ 111.2 License and district permit required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate permit is required for each Customs district in which a licensee conducts customs business. **[TD 86-161.]**

§ 111.3 Transactions for which license is not required.

A license is not required to engage in the following transactions with the Treasury Department or any representative thereof:

(a) *For one's own account.* An importer or exporter transacting Customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) *As employee of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the district director, but shall provide proof of its existence to Customs upon request. Only employees who are residents of the U.S. may be authorized to sign Customs documents; or

(2) *Authorized to transact other business.* The broker has filed with the district director a statement identifying the employee as authorized to transact business on his behalf. Such statement shall also be filed at each port within the district where the broker wishes the employee to act for him.

Where the employee is given authority under either (1) or (2) of this paragraph, the broker must promptly give notice of the withdrawal of authority of any such employee and must exercise such supervision of his employees as will insure proper conduct on the part of the employees in the transaction of Customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen.

(c) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(d) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a broker. **[TDs 78-99, 84-93.]**

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.3, without holding a valid broker's license, shall be liable for a monetary penalty for each such transaction as well as for each violation of the requirements of 19 U.S.C. 1641. The penalty shall be assessed in accordance with Subpart E of this chapter. **[TD 86-161.]**

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative thereof on any matter concerning such merchandise except that he shall not represent the client before Customs officers in a Customs district in which he has not been granted a permit.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it. **[TD 86-161.]**

Subpart B—Procedure to Obtain License Or Permit

§ 111.11 Basic requirements.

(a) *Individual.* An individual must:

(1) Be a citizen of the U.S., but not an officer or employee of the U.S.;

(2) Be at least 21 years of age;

(3) Be of good moral character; and

(4) Establish through an examination that he has sufficient knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters. Satisfactory knowledge is established in part by attaining a grade of at least 75 percent on the examination.

(b) *Partnership.* A partnership must:

(1) Have at least one member of the partnership who is a licensed broker, and

(2) Establish that it will have an office in the customs district where it has applied for a permit in which its customs transactions will be performed by the licensed member of the partnership, or an employee under the responsible supervision and control of the licensed member.

(c) *Association or corporation.* An association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs brokerage business;

(2) Have at least one officer who is a licensed broker; and

(3) Establish that it will maintain an office in the Customs district in which it has applied for a permit. Further, customs transactions in that office must be performed by a licensed officer or an employee under the responsible supervision and control of the licensed officer.

(d) *Responsible supervision and control.* The term "responsible supervision and control" means that degree of supervision and control necessary to ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide. While the determination of what is necessary to maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The frequency of visits to offices of the licensee by the licensed broker(s); the training required of employees; the issuance of written instructions and guidelines to the employees; the volume and type of business of the licensee; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of the licensed broker(s) for consultation with the employee(s), when necessary; the frequency of audits and reviews by the licensed broker(s) of the customs transactions handled by the employee(s); and any circumstance which indicates whether a licensed broker of the firm has a real interest in the firm's operations. **[TDs 86–161, 89–1.]**

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license shall be submitted in duplicate to the district director of the district in which the applicant intends to do business. The application shall be under oath and executed on Customs Form 3124. The application shall be accompanied by the fee prescribed in § 111.96 of this part and one copy of the attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States within the district, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted not later than 30 days before the scheduled examination which the applicant wishes to take. Applications may be accepted within 30 days before the scheduled examination in the district director's discretion. **[TDs 74–200, 78–99, 86–161.]**

(b) *Posting notice of application.* Upon receipt of the application the district director shall post a notice that the application has been filed. The notice shall be posted conspicuously for at least 2 weeks in the customhouse at the headquarters port and at the subports where the applicant proposes to maintain an office. The notice shall give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* If the applicant advises before the date of an examination that he wishes to withdraw his application, the application shall be treated as withdrawn and the district director shall refund the application fee to the applicant.

§ 111.13 Examination of applicant for individual license.

(a) *Examination.* The written examination shall be designated to determine the applicant's knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters and his fitness to render valuable service to importers and exporters. The examination will be prepared and graded in Headquarters, U.S. Customs Service. **[TDs 76–329, 86–161.]**

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in April and October. The district director shall give the applicant notice of the exact time and place where the examination will be given.

(c) *Special examination.* When a partnership, association, or corporation loses the licensed member or officer and its license will lapse under the provisions of 19 U.S.C. 1641(b)(5) before the next scheduled examination, the Commissioner may authorize a special examination for an applicant who will serve as the licensed member or officer. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. A special examination may also be authorized when a licensed brokerage firm loses its qualifying individual exercising responsible supervision and control over a district office and that office's permit will lapse before the next scheduled examination. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12.

(d) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license.

(e) *Failure to pass examination.* If the applicant does not obtain a grade of at least 75 percent, the Commissioner will notify him and the district director that the application for a license is denied because of failure to pass the examination.

(f) *Passing grade on examination.* If the applicant obtains a passing grade, the Commissioner will return the application to the district director for further processing of the application. **[TD 86–161.]**

§ 111.14 Investigation of the applicant.

(a) *Individual license.* If the applicant passes the examination, the district director shall refer the application to the special agent in charge for an investigation and report.

(b) *Partnership, association, or corporation license.* The district director shall immediately refer an initial application for a partnership, association, or corporation license to the special agent in charge for investigation and report. **[TD 82–18.]**

(c) *Scope of investigation.* The investigation shall ascertain facts relevant to the question whether the applicant is qualified and shall cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(d) *Report and return of the application.* The special agent in charge shall return the application with his report and recommendation to the district director who requested the investigation. The district director shall forward the originals of the application and the agent's report to the Commissioner. The district director shall also submit his recommendation for action on the application.

(e) *Additional investigation or examination.* The Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Commissioner finds that the applicant is qualified, he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license shall be forwarded to the district director, who shall deliver it to the licensee. The district director shall maintain an alphabetical list of brokers licensed in his district which list shall be available to the public.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the district in which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The causes sufficient to justify denial of an application for a license shall include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards;

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Commissioner.* Upon the denial of an application for a license, the applicant may file with the Commissioner of Customs, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Commissioner within 60 days of the denial. **[TD 74-272.]**

(b) *By the Secretary.* Upon the decision of the Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for such additional review as the Secretary shall deem appropriate. This request must be received by the Secretary within 60 days of the Commissioner's affirmation of the denial of an application for a license. **[TD 74-272.]**

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade provided the appeal action is commenced within 60 days after the date of entry of the Secretary's decision. **[TD 85-90.]**

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12 of this part.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part shall be concurrently issued a permit for the district through which the application was submitted, without the payment of the fee required by § 111.96 if it is shown to the satisfaction of the district director that the person intends to transact customs business within the district through which the broker's license application is submitted and the person otherwise complies with the requirements of this part.

(b) *Submission of application for permits for additional districts.* A licensed person who intends to conduct customs business in an additional Customs district, or a licensed person who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, shall submit an application for each additional Customs district to the district director of that district on Customs Form 3124. If the information set forth by the applicant on the Customs Form 3124 submitted pursuant to § 111.12 is current, a copy of that application may be submitted in place of a new Customs Form 3124. The Customs Form 3124 shall be modified to indicate that it is an application for a permit. The applicant shall comply with the requirements set forth in § 111.12(a). Each application for a permit shall identify the broker's license number and date of issuance. The broker shall list in its application all districts for which a permit has been granted. When a broker applies for a permit in an additional district, he must provide the district director with a document which reserves the business name with the state or local government, in order to avoid the use of the same or a confusingly similar name by two brokers.

(c) *Fee.* Each application for a permit shall be accompanied by the fees set forth in § 111.96.

(d) *Responsible supervision and control.* The applicant shall have a place of business within the district for which

the application is filed, or shall have made firm arrangements satisfactory to the district director to establish such a place of business. The applicant shall exercise responsible supervision and control over the office as defined by § 111.11(d). On and after October 31, 1987, other than as provided below, the applicant shall employ in each district for which a permit is granted at least one individual licensed under this subpart to exercise responsible supervision and control over the customs business conducted in the district. If the applicant can demonstrate to the satisfaction of the Commissioner that he regularly employes, in the region in which the district is located, at least one individual who is licensed, and that adequate procedures exist for the person employed in that region to exercise responsible supervision and control, as defined by § 111.11(d), over the customs business conducted in the district, the Commissioner may waive the requirement for a licensed broker in that district. A request for a waiver, supported by information on the volume and type of customs business conducted, or planned to be conducted, and evidence demonstrating that the applicant is able to exercise responsible supervision and control, shall be sent to the district director of the district in which the waiver is sought. The district director shall review the request for a waiver and make recommendations which will be sent to the Director, Entry Procedures and Penalties Division, Customs Headquarters, through the appropriate regional commissioner. The regional commissioner will review the district's recommendations and make appropriate recommendations before referring the matter to Customs Headquarters for a decision.

(e) *Action on application.* Upon receipt of the application for a permit, the district director shall immediately notify the district director in each other district in which the applicant has a permit and request comments as to the applicant's compliance with the duties and responsibilities of a broker in the other district. The district director in the other district shall timely submit his comments and recommendation to the district director making the request. The district director who received the application shall make a decision on it after considering all of the facts and circumstances. An application shall be approved unless action is pending in another district to suspend or revoke the applicant's license.

(f) *Investigation.* The district director may require an investigation to be conducted if additional facts are deemed necessary before making a decision upon the application. **[TDs 82-181, 86-161.]**

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of Transactions.

Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file a copy of each entry made by him with all supporting records, except those documents he is required to file with Customs, and copies of all his correspondence and other records relating to his Customs business. **[TD 86-161.]**

§ 111.22 Additional record of transactions.

(a) *Additional requirement.* In addition to the regular records of account required by § 111.21, each broker shall keep current a record of all his Customs transactions in the format set forth in paragraph (d) of this section, unless an exemption has been granted under the authority of paragraph (b) of this section. If a transaction has been handled only in part by the broker, he shall supply only the information required by this section which relates to his transaction. **[TDs 72-253, 78-138.]**

(b) *Exemption.* If the information required in paragraph (a) is disclosed in other records regularly kept and maintained by a broker and if such information is in a systematic, convenient, and readily available form so that Customs regulatory auditors can make an effective and complete inspection thereof, the district director with the concurrence of the Regional Director, Regulatory Audit, may in writing exempt the broker from the requirements of paragraph (a) of this section. A written request for exemption shall be addressed to the district director and shall include:

(1) A statement of facts as to the records kept; and

(2) An agreement that, if the exemption is granted, no change in the system of records or the manner of keeping and maintaining them will be made without prior written approval of the district director and concurrence in the change by the Regional Director, Regulatory Audit. **[TD 86-161.]**

(c) *Withdrawal of exemption.* Whenever an audit by a Customs regulatory auditor indicates that a broker to whom an exemption has been granted as provided for in paragraph (b) of this section is not keeping and maintaining records in conformity with the requirements of the paragraph, the exemption of such broker shall be withdrawn by notice in writing from the district director, and such broker shall thereafter keep and maintain records as required by paragraph (a) of this section.

(d) *Prescribed format.* Each licensed customs broker shall keep in the format set forth below and in the detailed manner indicated therein, a complete, correct, itemized record revealing all of his financial transactions as a broker. A separate sheet shall be used for the transactions with each of the broker's clients and all entries shall be made immediately after the transactions are accomplished.

Name of broker _____ Port of _____
Address _____ Name of importer or exporter (client) _____

Entry Number	Symbol (Footnote)	Date Of Entry 19—	Amounts Deposited with U.S.	Amounts Refunded Payee by U.S.	Amounts Disbursed To Client On Account of Refunds Made By U.S. Government	Broker's Fee	Bond Premium	Foreign Forwarding Charge	Inland Freight or Express	Storage or Cartage	Dock and Messenger Service	Public Stores	Warehouse Withdrawal	Miscellaneous	Cash Received From Clients Amount	Date 19—	Remarks Disposition Of Merchandise if Entry Not Completed
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)

(Note.—The following symbols shall be used to show the class of entry: "C", consumption; "W", warehouse; "WWC", warehouse withdrawal for consumption; "WWT", warehouse withdrawal for transportation; "R", re-warehouse; "R & W" re-warehouse and withdrawal for consumption; "IT", immediate transportation; "T & E", transportation and exportation; "D", exportation with benefit of drawback; "EWW", exportation under warehouse withdrawal; "E", exportation; "A", appraisement; "I", informal; "PP", packed packages.)

(e) *Authorization.* The regional commissioner for the region in which a broker has been granted an exemption to maintain records of financial transactions on a centralized system basis, as set forth in § 111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section. **[TD 86-161.]**

§ 111.23 Retention of records.

(a) *Place and period of retention.* (1) *Place.* The records, as defined in § 111.1(f), and required by §§ 111.21 and 111.22 to be kept by a broker, shall be retained within the Customs district to which they relate, unless an exemption has been granted for centralized accounting records under paragraph (e) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, shall be retained for at least 5 years after the date of entry. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall be retained for 5 years after either the date of revocation or the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii). When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry. **[TDs 70-224, 79-159, 86-161.]**

(b) *Microfilming of records.* A broker, with the approval of the district director for the district in which he has been granted a permit and the records are located, may maintain on microfilm or similar medium, in lieu of an original, any records other than powers of attorney required to be retained under the provisions of paragraph (a) of this section, at any time after the entry to which these records pertain has been liquidated, upon the following conditions: **[TDs 72-299, 86-161.]**

(1) *Approval of microfilming.* The broker shall submit to the district director for the district in which he is licensed a request for approval to microfilm records containing the following certification:

> This certifies that the records for which this approval is requested shall be microfilmed in accordance with the standards set forth in § 111.23(c) of the Customs Regulations (19 CFR 111.23(c)).

(2) *Retention of microfilm records.* The broker shall retain and keep available an original and one reproduction of each microfilm for the period specified by paragraph (a) of this section.

(3) *Use of microfilm records.* The reproduction copy of the original negative microfilm of books and papers may be used for reference purposes. However, the original negative microfilm shall not be used for reference purposes, and adequate measures shall be taken to keep the original negative clean and free from scratches.

(4) *Hard-copy reproductions.* Brokers microfilming their records shall use microfilm equipment having the capability of making direct hard-copy reproductions of the microfilmed records.

(5) *Expense of reproductions.* Brokers shall bear the expense of making hardcopy reproductions of any or all microfilmed records required by the Regional Director, Regulatory Audit, the special agent in charge, or other proper official of the U.S. Customs Service for the audit or inspection of books and records. **[TD 78-138.]**

(c) *Standards required for microfilming.* Brokers microfilming their records shall maintain the integrity of the original records by insuring that the microfilm copies are true reproductions of the original records and serve the purpose for which such records were created. The following shall be observed in any microfilming: **[TD 72-299.]**

(1) Copies shall contain all significant record detail shown on the original.

(2) Copies of the records, on either roll microfilm or unit microfilm systems, shall be so arranged, identified, and indexed that any individual document or component of the records can be located with reasonable facility.

(3) Any indexes, registers or other finding aids shall be microfilmed at the beginning of the records to which they relate.

(d) *Other methods of reproduction for record retention.* If approved by the district director in which a broker has been granted a permit and in which he has records located, a broker may use, in lieu of original documents, methods of reproduction other than microfilm, including microfiche, for the reproduction of records, provided the requirements of paragraphs (b) and (c) of this section are met. While original powers of attorney must be retained, copies also may be retained. **[TDs 78-138, 86-161.]**

(e) *Exemption.* (1) *Applicability.* The procedure to maintain financial records on a centralized system basis is available to brokers who have been granted permits to do business in more than one district.

(2) *Request.* A written request for authorization to maintain financial records on a centralized system basis shall be submitted to the regional commissioner responsible for the region in which the centralized records are to be maintained. The written request shall include:

(i) The address at which the broker desires to maintain the centralized accounting records. This location must be within a district where the broker has been granted a permit.

(ii) A detailed statement describing all the records of financial transactions to be maintained at the centralized location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations.

(iii) An agreement that if the authorization is granted, no change in the records, the manner of recordkeeping, or the location at which they will be maintained, will be made unless approved by Customs. Each request for a change requires prior approval in the same manner as prescribed above.

(iv) An agreement to comply with § 111.22.

(v) An agreement that all financial records pertaining to customs transactions will be made available to Customs for complete inspection in accordance with § 111.25 and § 162.1d of this Chapter after reasonable notice orally or in writing has been provided.

(3) *Approval.* After the broker's request has been received and reviewed by the regional commissioner, he shall advise the broker, in writing, of his decision whether to authorize the broker to maintain financial records on a centralized system basis. If the regional commissioner denies the request he shall advise the broker of the reasons. Denial shall be without prejudice to reapply for an exemption. If the request involves records from districts not within the jurisdiction of the regional commissioner of the region where the request was filed, the regional commissioner should consult with the other affected regional commissioners before acting on the request.

(f) *Withdrawal of exemption.* Whenever an audit by Customs indicates that a broker to whom an exemption has been granted is not keeping records in accordance with the requirements of paragraph (e) of this section, the regional commissioner who granted the exemption shall notify the broker, in writing, of the audit finding(s). The regional commissioner shall provide the broker with 30 days from the date of notification to respond to the audit finding(s) unless a shorter period is deemed necessary. If the broker fails to respond, or if the regional commissioner determines that a broker has not responded satisfactorily to the audit finding(s), the regional commissioner shall withdraw the exemption by notice in writing. The withdrawal shall not become effective until 30 days after the date of mailing of the notice. The broker shall thereafter keep and maintain records as required by paragraph (a) of this section.

(g) *Reproduction of centralized accounting records.* The regional commissioner for the region in which a broker has been granted an exemption to maintain financial records on a centralized system basis, provided in paragraph (e) of this section, is responsible for approving requests for the reproduction of centralized financial records provided under paragraphs (b) and (d) of this section. **[TD 86-161.]**

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients and the Regional Director, Regulatory Audit, the special agent in charge, or other duly accredited agent of the U.S. except on subpoena by a court of competent jurisdiction. **[TDs 78-138, 86-161.]**

§ 111.25 Records shall be available.

During the period of retention, the broker shall maintain his records in such manner that they may readily be examined, and they shall be made available for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents in accordance with the provisions of §§ 162.1a through 162.1i within the period of retention or within any longer period of time during which they remain in the possession of the broker. **[TDs 78-138, 79-159, 86-161.]**

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of §§162.1a through 162.1i, a broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, nor shall he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in such record. **[TDs 79-159, 86-161.]**

§ 111.27 Audit or inspection of records.

The Regional Director, Regulatory Audit, shall make such audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable the district director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part. Furthermore, the Regional Director, Regulatory Audit, and/or the special agent in charge, may inspect such records to obtain information regarding specific Customs transactions for the purpose of protecting importers or the revenue of the U.S. The Regional Director, Regulatory Audit, and the special agent in charge conducting an audit or inspection under this section shall submit a report of the findings to the Commissioner and the district director. **[TDs 78-138, 86-161.]**

§ 111.28 Responsible supervision.

(a) *General rule.* Every licensed broker operating as a sole proprietor and every licensed member of a partnership and every licensed officer of an association or corporation which is licensed as a broker shall exercise responsible supervision and control over the transaction of the Customs business of such sole proprietorship, partnership, association, or corporation. **[TD 71-39.]**

(b) *Employee information.*

(1) *Current employees; General.* Each broker shall submit, in writing, to each district director where the broker has a permit to transact customs business, a list of the names of persons currently employed in that district. For

each such employee, the broker also shall provide the current home address, last prior home address, social security number, date and place of birth, and if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, the list shall be updated and submitted with the status report required by § 111.30(d) of this part.

(2) *New employees.* Within 10 days after a new employee has been employed for 30 days, the broker shall submit, in writing, to the district director, the same information as set forth above for any new employee.

(3) *Terminated employees.* Within 30 days after the termination of employment of any employee employed longer than 30 days, the broker shall submit, in writing, to the district director, the name of the terminated employee.

(4) *Broker's responsibility.* A broker is responsible for providing the information required in paragraphs (b)(1), (b)(2), and (b)(3) of this section. However, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of information provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* If a licensed broker who is a qualifying member of a partnership, or officer of an association or corporation, ceases his employment as a qualified member or officer, that broker shall give written notice immediately of that fact to the Commissioner and send a copy of the written notice to each district director where a permit has been granted to the partnership, association, or corporation. **[TDs 71–39, 86–161.]**

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, shall be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date shall be transmitted to the Government within 5 working days from receipt by the broker. Each broker shall provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 days of receipt. No written statement is required if there is actual payment by a broker of such funds.

(b) *Notice to client of method of payment.* (1) All brokers shall provide their clients with a written notification as follows:

> If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which shall be delivered to Customs by the broker.

(2) Brokers shall provide the information statement in paragraph (b)(1) as follows:

(i) On, or attached to, any power of attorney executed on or after (60 days from the date of publication in the ***Federal Register***); and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each subsequent 12-month period thereafter. An active client means a client from whom a broker has obtained a power of attorney, and for whom the broker has transacted Customs business on at least two occasions within the 12-month period preceding notification. **[TDs 82–134, 82–219, 86–161.]**

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report.

(a) *Business address.* When a broker changes his business address, he shall immediately give written notice of his new address to the Commissioner and the district director for the district in which the change of address occurs.

(b) *Organization.* A partnership, association, or corporation shall immediately inform the Commissioner and each district director of the districts in which it has a permit, of the following changes:

(1) The date on which the licensed member or officer who is the qualifying member or officer ceases to be a member or officer and the name of the broker who will succeed as the qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business.

(c) *Name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, shall submit evidence of his authority to use such name. The name shall not be used until the approval of the Commissioner has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing Customs documents.

(d) *Status report.* Each broker shall file a status report with Customs on February 1, 1979, and on February 1 of each third year thereafter. The report shall be accompanied by a fee as set forth in § 111.96. A report received during the month of February will be considered filed timely. The report shall be addressed to the U.S. Customs Service, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, DC 20229. A copy also shall be filed with the district director in each district where the broker has been granted a permit to transact customs business. No form or particular format is required. Each individual broker shall state whether he is actively engaged in transacting business as a broker. If so, he shall state the name under, and the address at which, his business is conducted (if he is a sole proprietor); or the name and address of his employer, unless his employer is a corporation, partnership or association broker for which he is a qualifying officer or member. The report of each corporation, partnership or association shall state the name under which its business as a broker is being transacted, its business address, the names and addresses of the members of the partnership or officers of the corporation or association qualifying it for a license, and whether it is actively engaged in transacting business as a broker. If the licensed person fails to file the required report by March 1 of the reporting

year, the license is suspended by operation of law on that date. By March 31 of the reporting year, the Commissioner shall transmit written notice of the suspension to the licensee by certified mail, return receipt requested, at the address reflected in Customs records. If the licensed person files the required report within 60 days of receipt of the notice, the license shall be reinstated upon payment of $100. If the licensed person does not file the required report within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license. Notice of the revocation shall be published in the ***Customs Bulletin***.

(e) *Location.* Upon the permanent termination of a brokerage business, both the Commissioner and the district director of each Customs district for which a permit has been issued shall be provided written notification of the name and address of the party having legal custody of the brokerage business records. Responsibility for notification shall be as follows:

(1) The broker, upon the permanent termination of his brokerage business;

(2) The licensed partner(s), upon the permanent termination of the partnership brokerage business;

(3) The licensed association or corporate officer(s), upon the permanent termination of the association or corporate brokerage business. **[TDs 79–159, 86–161.]**

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker

CHECK FOR LOST DATA

§ 111.34 Undue influence upon Government employees.

A broker shall not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative thereof by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker shall not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Service to others not to benefit unlicensed person.* A broker shall not enter into any agreement with an unlicensed person to transact Customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person except as provided in paragraph (b) of this section. When a broker is employed for transaction of Customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer a copy of his bill for services rendered, unless the merchandise was purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person).

(b) *Employment by a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, providing:

(1) The importer is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant thereto, shall forbid or prevent direct communication between the importer and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall be subject to all other provisions of these regulations.

§ 111.37 Misuse of license or permit.

A broker shall not permit his license, permit or his name to be used by or for any unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license or permit is under suspension in the solicitation, promotion or performance of any customs business or transaction. **[TDs 77–218, 86–161.]**

§ 111.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any Customs matter, nor shall he represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 111.39 Advice to client.

(a) *Withholding or false information.* A broker shall not withhold information relative to any Customs business from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any Customs business.

(b) *Error or omission by client.* A broker who knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

§ 111.40 Protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any protest, unless he shall previously have been authorized to do so in accordance with § 174.3 of this chapter. **[TD 70–181.]**

§ 111.41 Endorsement of checks.

A broker shall not endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

§ 111.42 Relations with person who is notoriously disreputable or whose license has been suspended, canceled "with prejudice," or revoked.

A broker shall not knowingly and directly or indirectly:

(a) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose license as broker shall have been revoked for any cause, or whose license is under suspension, or who has had his license canceled "with prejudice;"

(b) Assist the furtherance of any Customs business or transactions of such person;

(c) Employ, or accept such assistance from, any such person, without the approval of the Commissioner (see § 111.79);

(d) Share fees with any such person, or

(e) Permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker. Nothing herein shall be deemed to prohibit any broker from acting as a broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customs broker revoked or suspended, or may be notoriously disreputable.

§ 111.43 Display of license and permits.

Each licensee shall display its permit in the principal office within the district so it may be seen by anyone transacting business in the office. Photocopies of the permit shall be conspicuously posted in each branch office within the district. Photocopies of the license also may be posted. **[TD 86-161.]**

§ 111.44 Limitation of liability.

A broker may not limit his liability to a client with respect to a claim by the client arising out of the wrongful or negligent action of the broker in connection with a matter handled by him as a broker. Further, no broker shall enter into a contract which purports to so limit his liability. **[TD 72-193.]**

§ 111.45 Revocation by operation of law.

(a) *License.* The failure of a broker that is licensed as a corporation, association, or partnership to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed, shall, in addition to causing the broker to be subject to any other sanction, result in the revocation by operation of law of its license and any permits issued to a corporation, association, or partnership. The Commissioner will notify the broker in writing of an impending revocation or lapse by operation of law 30 days before the revocation or lapse is due to occur.

(b) *Permit.* On or after October 31, 1987, the failure of a broker who has been granted a permit, to employ, for any continuous period of 180 days, at least one individual who is licensed within the district (or region, if an exception has been granted pursuant to § 111.19(d)), for which a permit was issued, shall, in addition to causing the broker to be subject to any other sanction, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or permit of a partnership, association, or corporation is revoked by operation of law, the Commissioner will notify the organization of the revocation. If an individual broker's permit is revoked by operation of law, the Commissioner will notify the broker. A copy of the notice will be sent to the district director. Notice to the public of the revocation will be given by publication in the ***Customs Bulletin***.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, or Monetary Penalty in Lieu Thereof

§ 111.50 General.

This subpart relates to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu thereof under the provisions of section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions for assessment of a monetary penalty under sections 641(b)(6) and 641(d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6), 1641(d)(2)(A)), are contained in Subpart E. **[TD 86-161.]**

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Commissioner may cancel a broker's license or permit "without prejudice" upon written application by the broker if the Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If he determines that the application for cancellation was made in order to avoid such proceedings, the Commissioner may cancel the license or permit "without prejudice" if authorized by the Secretary of the Treasury.

(b) *With prejudice.* The Commissioner may cancel a broker's license "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license had been revoked for cause by the Secretary. **[TD 86-161.]**

§ 111.52 Voluntary suspension of license or permit.

The Commissioner may accept a broker's written voluntary offer of suspension for a specific period of time of the broker's license or permit under such terms and conditions as the parties may agree. **[TD 86-161.]**

§ 111.53 Grounds for suspension or revocation of license or permit or monetary penalty in lieu thereof.

Other than as set forth below, the appropriate Customs official may suspend, for a specific period of time, or revoke the license or permit of any broker or assess a monetary penalty in lieu of suspension or revocation, for the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact,

or has omitted to state in any application or report any material fact which was required.

(b) The broker has been convicted, at any time after filing of an application for a license under § 111.12, of any felony or misdemeanor which the appropriate Customs officer finds:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds (infractions set forth in this subparagraph may form the basis for an action to suspend or revoke only);

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without the written approval of the Commissioner; or

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client. **[TD 86–161.]**

§ 111.54 Appropriate officer of the Customs.

Unless otherwise indicated in this part, the district director shall be the appropriate officer of the Customs within the scope of § 641(d)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)). In the case of sickness or absence of the district director, the assistant district director designated by the district director shall be the appropriate officer of the Customs. If the office of district director is vacant or the district director is unable to designate an assistant district director as appropriate officer of the Customs, the Commissioner shall designate one of the assistant district directors to be the appropriate officer of the Customs. **[TDs 75–58, 86–161.]**

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action shall be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge shall submit a report on the investigation to the director of the appropriate district and send a copy of it to the Commissioner.

§ 111.56 Review of report on investigation.

The district director shall review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He shall then submit his recommendation with supporting reasons to the Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Commissioner.

(a) *Determination not to prefer charges.* If the Commissioner determines that charges will not be preferred, he shall notify the district director of his decision.

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he shall notify the district director of his determination and require that a proposed statement of charges be prepared for his review, if not previously submitted. **[TD 86–161.]**

§ 111.58 Content of statement of charges.

The statement of charges shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license. The statement of charges also shall specify the sanction being proposed (e.g., suspension of the broker's license, or revocation of the license) but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the accused of the charges against him so that he is able to prepare his response shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. **[TD 86–161.]**

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The district director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license.

(b) *Notice of preliminary proceedings.* The district director shall serve upon the broker, as set forth in § 111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that formal proceedings are available to him;

(3) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(4) Invites him to show cause why the formal proceedings should not be instituted;

(5) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises him of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 days of the date of the notice. **[TD 86–161.]**

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. He shall set forth in his request in what respect the

proposed statement of charges leaves him in doubt and describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the district director such information is reasonably necessary to enable the broker to prepare his response, he shall furnish the broker with such information. [TD 86-161.]

§ 111.61 Decision on preliminary proceedings.

The district director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Commissioner together with a copy of each paper filed by the broker. The district director shall also give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the district director who shall notify the broker. If no response is filed or the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the district director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the district director to omit those charges from the statement of charges. [TD 86-161.]

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, he may file, in duplicate with the district director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual licensee.* The district director shall serve the notice of charges and the statement of charges against an individual licensee as follows:

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The district director shall serve the notices of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the district director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 15 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 or upon the broker's attorney. [TD 86-161.]

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled. [TDs 75-58, 86-161.]

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) shall proceed with the hearing as scheduled, and shall hear evidence submitted by the parties. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension for a specified period of time or revocation or monetary penalty in lieu thereof if he finds it to be in order. [TDs 75-58, 86-161.]

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer shall be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in Customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record. [TD 75-58.]

(d) *Transcript of record.* The district director shall provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the district director shall deliver a copy to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Commissioner shall designate one or more persons to represent the Government at the hearing. **[TDs 75–58, 86–161.]**

§ 111.68 Proposed findings and conclusions.

The hearing officer shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons therefor as contemplated by 5 U.S.C. 557(c). **[TD 75–58.]**

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision shall conform with the requirements of 5 U.S.C. 557. **[TD 75–58.]**

§ 111.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, any other immaterial mistake in the statement of charges or a failure to prove immaterial allegations in the description of the accused's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the district director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 111.73 Partial proof of charges.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury, in the exercise of his discretion based solely on the record, issues an order of suspension for a specified period of time or revocation of the license of a broker or a monetary penalty in lieu thereof, the Commissioner will notify the broker in writing and publish a notice of suspension or revocation or monetary penalty in lieu thereof in the ***Federal Register*** and in the ***Customs Bulletin*** unless an appeal is filed by the broker in the Court of International Trade as provided for under section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The order of suspension or revocation shall become effective 60 days after the issuance of such order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal is filed, that penalty shall be tendered within 120 days of the issuance of the order, or the license shall automatically be suspended until payment is made. **[TD 86–161.]**

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit or assessing a monetary penalty in lieu thereof may be taken in accordance with the provisions of section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of such proceedings shall, unless specifically ordered by the court, operate as a stay of the Secretary's order. **[TD 86–161.]**

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Any person whose license has been suspended or revoked may make written application in duplicate to the Commissioner to have the order of suspension or revocation set aside or modified upon the ground of newly discovered evidence or that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth specifically the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard. **[TDs 75–58, 86–161.]**

(b) *Procedure.* The Commissioner shall forward the application with his recommendation to the Secretary of the Treasury. The Secretary may grant or deny the application for reopening of the case and may order the taking of additional testimony before the Commissioner. The Commissioner shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Commissioner shall set a time and place for such hearing and give due notice thereof to the applicant. The procedure governing the additional hearing and recommended decision of the Commissioner shall be the same as that governing the original proceeding. **[TDs 75–58, 86–161.]**

§ 111.77 Notice of reinstatement.

If the Secretary of the Treasury issues an order vacating or modifying the prior order of suspension or revocation, the Commissioner will notify the broker and publish a notice of the new order in the ***Federal Register*** and the ***Customs Bulletin.***

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings the regional Commissioner or the district director, with the approval of the regional Commissioner, may serve the broker with a written

reprimand. Such reprimand and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted. [TD 77-242.]

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license, the ex-broker may petition the Commissioner for authorization to accept employment with or to assist a licensed broker. Such petition shall not be approved unless the Commissioner is satisfied that the petitioner has refrained from all activities in any way violative of the provisions of § 111.42 and that petitioner's conduct has been exemplary during the period of disability. The Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct leads to pecuniary loss to the Government or to any person, the Commissioner shall also take into account whether the petitioner has made reimbursement for the losses incurred.

§ 111.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to October 30, 1984, shall be governed by the provisions of 19 CFR Part 111 which were in force at the time the proceeding was instituted. For the purposes of this provision, the commencement of preliminary proceedings shall be considered the institution of proceedings for revocation or suspension, if preliminary proceedings were held. [TD 86-161.]

§ 111.81 Settlement and compromise.

The Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this Part according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty. [TD 86-161.]

Subpart E—Monetary Penalty

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

The appropriate Customs officer may assess a monetary penalty or penalties as follows: (a) An amount not to exceed an aggregate of $30,000 for any of the reasons set forth in § 111.53, except for those listed in paragraph (b)(3) of that section; or (b) An amount not to exceed an aggregate of $30,000 for all violations and $10,000 for each violation of § 111.4.

§ 111.92 Notice.

The appropriate Customs officer shall issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The district director has discretion to provide additional time for good cause. Any notice, the basis of which is an alleged violation of § 111.53(b) or which exceeds an aggregate of $10,000 for all alleged violations, shall be referred to the Director, Entry Procedures and Penalties Division, Customs Headquarters, for approval before it is issued.

§ 111.93 Application for relief.

The person shall follow the procedures set forth in Part 171 of this Chapter in filing an application for relief.

§ 111.94 Decision of appropriate Customs officer.

The appropriate Customs officer shall follow the procedures set forth in Part 171 of this Chapter in considering the application for relief. After the appropriate Customs officers have considered the allegations or complaints and any timely response made, a written decision shall be issued which sets forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the person is liable for a monetary penalty, the person shall pay, or make arrangements for payment, within 60 days of the date of the final determination. If the monetary penalty is not paid or arrangements made for payment within the time limitations, the appropriate Customs officer shall refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief.

A final determination of the district director or other appropriate Customs officer in excess of $1,000 may be the subject of a supplemental petition for relief under the provisions of § 171.33 of this Chapter. A final determination of $1,000 or less is a final decision and is not subject to further administrative review.

§ 111.96 Fees.

(a) *License fee.* Each applicant for a broker's license pursuant to § 111.12, or by special examination pursuant to § 111.13(c), shall be charged a fee of $300 to defray the costs to Customs for the preparation and administration of the examination and other expenses in processing the application. If an applicant either fails to appear for an examination without giving notice at least 24 hours before the examination, or does not pass the examination required by § 111.11(a)(4), $100 of the fee will be refunded.

(b) *Permit fee.* Each application for a permit pursuant to § 111.19 shall be accompanied by a one-time fee of $100 to defray the costs of processing the application. If for any reason a permit lapses or is revoked, payment of the permit fee is necessary before the permit can be reinstated.

(c) *User fee.* An annual user fee of $125 will be assessed for each permit held by an individual, partnership, association or corporate broker. The fee is payable for each calendar year in each district where a broker has a permit to do business by the due date, which will be published in the ***Federal Register*** annually. If a broker receives a permit at a time other than the beginning of a calendar year, the full $125 must be paid immediately. If a broker fails to pay the fee by the due date published in the ***Federal Register,*** or immediately at the time he receives his permit, the district director will notify the broker in writing of failure to pay and revoke the permit to operate. The notice will constitute revocation of the permit. [TD 86-195.]

(d) *Status report fee.* The status report provided for in § 111.30 shall be accompanied by a fee of $100 to defray the costs of administering the reporting requirement.

(e) *Payment of fee.* All fees shall be paid by check or money order payable to the U.S. Customs Service. [TDs 86-109, 86-161.]

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

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Authority: R.S. 251, as amended, secs. 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759; 19 U.S.C. 66, 1551, 1565, 1624.

Source: T.D. 73-140, 38 FR 13551, May 23, 1973, unless otherwise noted.

§ 112.0 Scope.

This part sets forth regulations providing for the bonding of carriers which will receive merchandise for transportation in bond, and the licensing of cartmen and lightermen for the cartage of merchandise entered for warehouse, designated for examination, or taken into custody as unclaimed, and the procedures in applying for such bonds or licenses. This part also sets forth the regulations concerning the obtaining of identification cards by cartmen and lightermen, and their employees and the procedures for revoking or suspending licenses and identification cards. Provisions setting forth the duties and responsibilities of cartmen and lightermen are set forth in Part 125 of this chapter. **[TDs 73-140.]**

Subpart A—General Provisions

§ 112.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Carrier.* A "carrier" is one who undertakes to transport goods, merchandise or people.

(b) *Cartman.* A "cartman" is one who undertakes to transport goods or merchandise within the limits of the port.

(c) *Common carrier.* A "common carrier" is a carrier owning or operating a railroad, steamship, or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him.

(d) *Contract carrier.* A "contract carrier" is a carrier which undertakes to transport specific goods or merchandise for a specific person or group of persons, and is authorized to operate as such by any agency of the U.S.

(e) *Freight forwarder.* A "freight forwarder" is one who engages in the business of dispatching shipments on behalf of other persons, for a consideration, in foreign or domestic commerce between the U.S., its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments, and is authorized to operate as such by any agency of the U.S.

(f) *Lighterman.* A "lighterman" is one who transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port.

(g) *Private carrier.* A "private carrier" is a carrier of his own goods or merchandise.

§ 112.2 Bond or license required.

(a) *Carriers.* A bond provided for in this part is required to transact business as a carrier receiving merchandise for transportation in bond.

(b) *Cartmen and lightermen.* A bond and license provided for in this part are required to transact business as a cartman or lighterman for the cartage or lighterage of merchandise entered for warehouse, designated for examination, taken to container stations, or taken into custody as unclaimed.

Subpart B—Authorization of Carriers To Carry Bonded Merchandise

§ 112.11 Carriers which may be authorized.

(a) *From port to port in the U.S.* The district director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the U.S. upon compliance with the provisions of this subpart:

(1) Common carriers.
(2) Contract carriers.
(3) Freight forwarders.
(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and (ii) the private carrier files a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter. **[TDs 75-221, 78-243, 81-243, 84-213.]**

(b) *Between ports in Canada or Mexico through the U.S.* Canadian and Mexican motor vehicle common carriers may be authorized to transport merchandise under bond between ports in Canada or Mexico through the U.S. (see Part 123 of this chapter), upon compliance with the provisions of this subpart.

§ 112.12 Application for authorization.

(a) *General requirements.* All carriers and freight forwarders desiring to be authorized to receive merchandise for

transportation in bond shall file with the district director concerned a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in a sum specified by the district director accompanied by a fee of $50. A check or money order shall be made payable to the U.S. Customs Service.

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the district director the following documents:

(1) *Common carriers other than railroad, steamship, or airline companies.* Common carriers other than railroad, steamship, or airline companies generally known to be engaged in common carriage, shall file a certified extract of its articles of incorporation or charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier.

(2) *Contract carriers and freight forwarders.* Contract carriers and freight forwarders shall file a certificate from the appropriate agency of the U.S. showing that the applicant is authorized to operate as a contract carrier or freight forwarder by that agency and a statement showing that the applicant is operating or intends to operate as such.

(3) *Private Carriers.* The private carrier shall file the bond with the district director in the Customs district where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone. **[TDs 81-243, 86-16.]**

(4) *Motor carriers.* All motor carriers shall file:

(i) A detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered; and

(ii) A statement showing that facilities are available for the segregation and safeguarding of the packages designated by the district director for examination from a particular shipment.

§ 112.13 Approval of applications.

The district director shall approve an application for authorization as carriers of bonded merchandise and the bond filed, authorizing the applicant to act as a carrier of bonded merchandise provided he is satisfied that:

(a) The amount of the bond is sufficient.

(b) All documents required by this subpart have been furnished and are in proper form; and

(c) The fee prescribed has been paid.

§ 112.14 Discontinuance of carrier bonds.

Carrier bonds may be discontinued at any time by the Commissioner of Customs or by the district director of the district where the bond is filed. Authorized carriers desiring to terminate such bonds shall make application therefor to such district director.

Subpart C—Licensing of Cartmen and Lightermen

§ 112.21 License required.

A customhouse cartage or lighterage license issued by the district director in accordance with this part or specific authorization of the Commissioner of Customs shall be required to perform Customs cartage or lighterage, except as provided for in §§ 18.3 and 125.12 of this chapter.

§ 112.22 Application for license.

(a) *General requirements.* An applicant for a customhouse cartage or lighterage license shall file with the district director for the district in which he proposes to conduct business the following: **[TD 78-274.]**

(1) A bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in an amount specified by the district director. **[TDs 78-274, 84-213.]**

(2) Payment of a fee of $100. A check or money order shall be made payable to the U.S. Customs Service.

(3) If required by the district director, a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

(b) *Special requirements*—(1) *Cartman licensed by city or State.* Any cartman licensed by city or State authorities shall present to the district director his city or State license, after which such documents shall be returned.

(2) *Lighterman.* A lighterman shall present his vessel's marine documents, if any have been issued, to the district director for examination, after which such documents shall be returned.

(c) *Reapplication by certain terminated licensees.* Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to § 113.56 of this chapter, the district director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in § 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the district director under this paragraph will be deemed to have been complied with for purposes of § 112.24(b). **[TD 76-324.]**

§ 112.23 Investigation of applicant.

The district director may refer the application for a cartman's or lighterman's license to the Customs special agent in charge for the district in which the application is filed for investigation and report concerning the character, qualification, and experience of the applicant as well as the nature and fitness of the equipment to be used.

§ 112.24 Issuance of license.

The district director shall issue a customhouse cartage and lighterage license on Customs Form 3857 provided he is satisfied that:

(a) The character, qualifications, and experience of the applicant and fitness of his equipment are satisfactory.

(b) The applicant has complied with all the requirements of § 112.22.

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in § 113.63 of this chapter may be appointed or licensed as a Customs cartman or lighterman for a port for which such bond provides coverage, upon compliance with § 112.22. If a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter has been filed, the carrier or freight forwarder need not file another bond to satisfy the requirements of § 112.22(a)(1). Investigation pursuant to § 112.23 may apply. **[TDs 78–274, 84–213.]**

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to § 112.30 or until the required bond is terminated pursuant to § 113.26 of this chapter. **[TDs 76–324, 84–213.]**

§ 112.27 Marking of vehicles and vessels.

(a) *Marking required.* Every vehicle licensed by Customs for cartage and every barge, scow, or other lighter licensed by Customs for lighterage shall be marked with the legend "Customs License No. _____", and the name of the person or firm to whom the license has been issued. The abbreviated legend "C.H.L. No. _____" may be used.

(b) *Size of marking.* The marking required by this section shall appear in letters and figures not less than 3 inches high.

(c) *Place of marking*—(1) *Carts, trucks, drays, and other vehicles.* Every cart, truck, dray, or other vehicle used for Customs cartage by a licensed cartman shall be marked with the required legend and name on each side by painting directly onto the vehicle, or by the permanent attachment of signs bearing the required marking. However, if such marking is found by the district director to be impractical, he may designate some other conspicuous place upon the vehicle where the marking shall appear.

(2) *Barges, scows, lighters, and other vessels.* Every barge, scow, lighter, or other vessel used for Customs lighterage by a licensed lighterman shall be conspicuously marked with the required legend and name.

(d) *Removal of marking upon termination of license.* The markings required by this section shall be removed upon termination of the license. **[TD 84–213.]**

§ 112.28 Production of license.

Inspectors or other Customs officers may require any person claiming to be a licensed customhouse cartman or lighterman to produce his license for inspection.

§ 112.29 Records.

(a) *Records of cartage and lighterage.* The district director may require that licensed Customs cartmen and lightermen shall make, keep, and promptly submit for Customs inspection and examination upon request therefor such current written records relating to cartage and lighterage as may be needed for purposes of local Customs administration, Cartmen and lightermen shall maintain these records for 3 years from the expiration date of the related contract for cartage or lighterage. **[TD 79–159.]**

(b) *Current list of officers, members, or employees.* The district director may require a licensee to furnish, at such times and intervals as the district director deems necessary, a current list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

§ 112.30 Suspension or revocation of license.

(a) *Grounds for suspension or revocation of licenses.* The district director may revoke or suspend the license of a cartman or lighterman if:

(1) His license is not promptly produced upon demand;

(2) His vehicle or vessel is not properly marked, as required by § 112.27;

(3) The cartman or lighterman refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the cartage or lighterage of merchandise, including the making, keeping, and submitting of current written records relating to cartage and lighterage;

(4) The license was obtained through fraud or the misstatement of a material fact;

(5) The holder of such a license or an officer of a corporation holding such a license is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision: **[TD 88–63.]**

(6) The holder of such license permits it to be used by any other person;

(7) The holder of such license fails to surrender promptly, or satisfactorily explain the failure to surrender, to the district director, identification cards of persons no longer employed by him where identification cards are required pursuant to § 112.41;

(8) The holder of such license fails to furnish a current list of names and addresses of officers and members or employees when required by the district director pursuant to § 112.29;

(9) The holder is guilty of any negligence, dishonest or deceptive practices or carelessness in the conduct of his business; or

(10) The district director determines that the bond is not sufficient in amount or lacks sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice of revocation or suspension.* The district director shall suspend or revoke a license by serving notice of the proposed action in writing upon the holder of the license. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the license and shall be final and conclusive upon the licensee unless he shall file with the district director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The licensee may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the licensee to the statement

of the district director. The licensee in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The licensee shall be notified of the time and place of the hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the license may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the licensee. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the licensee may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the licensee nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the licensee.

(f) *Review by the Court of International Trade.* Any licensee adversely affected by a decision of the Commissioner of Customs may appeal the decision in the Court of International Trade. **[TD 85-90.]**

Subpart D—Identification Cards

§ 112.41 Identification cards required.

A district director may require each licensed cartman or lighterman and each employee thereof who receives, transports, or otherwise handles imported merchandise which has not been released from Customs custody to carry and display upon request of a Customs officer an identification card issued by the Bureau of Customs. The card shall be in the possession of the person in whose name it is issued at all times when he is engaged in transactions with respect to imported merchandise. An identification card shall not be issued to any person whose employment in connection with the transportation of bonded merchandise will, in the judgment of the district director, endanger the revenue.

§ 112.42 Application for identification card.

An application for an identification card required pursuant to § 112.41, shall be filed personally by the applicant with the district director on Customs Form 3078 together with two 1¼′ × 1¼′ color photographs of himself. The fingerprints of the applicant shall also be required on Standard Form 87 at the time of the filing of the application. The application may be referred to the Customs special agent in charge for investigation and report concerning the character of the applicant.

§ 112.43 Form of identification card.

The identification card shall be issued on Customs Form 3873 and shall not be valid unless signed by the employee and a Customs officer and the U.S. Customs seal is impressed thereon. The holder shall encase the card in protective transparent plastic so that both sides are clearly visible.

§ 112.44 Changes in information on identification cards.

Where there has been a change in the name, address, or employer of the holder, the card shall be promptly submitted by the cardholder to the district director, supported by application in proper form indicating the change so that it may be officially changed on the Customs records. New cards shall be issued when necessary.

§ 112.45 Surrender of identification cards.

The identification card shall be surrendered by the holder or licensee to the district director when:

(a) The employee holder leaves the employment of the licensed cartman or lighterman;

(b) The cartman or lighterman bond or license is terminated; or

(c) The card is revoked or suspended pursuant to § 112.48.

§ 112.46 Report of loss or theft.

The loss or theft of an identification card shall be promptly reported by the cardholder to the district director.

§ 112.47 Wrongful presentation.

If an identification card is presented by a person other than the one to whom it was issued, such card shall be forthwith confiscated.

§ 112.48 Revocation or suspension of identification cards.

(a) *Grounds for revocation or suspension of identification cards.* An identification card issued pursuant to this part may be revoked or suspended by the district director for any of the following grounds:

(1) Such card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such card is convicted of felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the card to be used by any other person, or refuses to produce it upon the proper demand of a Customs officer; or

(4) The holder fails to abide by the rules and regulations prescribed in § 112.45 and Part 125 of this chapter.

(b) *Notice of revocation or suspension.* The district director shall suspend or revoke an identification card by serving notice of the proposed action in writing upon the holder of the card. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the card and shall be final and conclusive upon the holder unless he shall file with the district director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The holder may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the district director. The holder in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the card may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the cardholder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder of the card may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the cardholder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the cardholder.

§ 112.49 Temporary identification cards.

(a) *Issuance.* When an identification card is required by the district director under § 112.41, and the district director determines that the application for the identification card cannot be administratively processed in a reasonable period of time, any licensed cartman or lighterman may upon written request have a temporary identification card issued by the district director to his employee if he can show to the satisfaction of the district director that a hardship to his business would result pending issuance of an identification card.

(b) *Validity and renewal.* The temporary identification card shall be valid for a period of 60 days. The district director may renew the temporary identification card for additional 30–day periods if he feels that the circumstances under which the temporary identification card was originally issued continue to exist. The temporary identification card shall be returned by the holder or licensee to the district director when the identification card is issued or the privileges granted thereby are withdrawn.

(c) *Withdrawal of temporary card.* The temporary identification card may be withdrawn at any time if in the judgment of the district director continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification card refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation.

(d) *Bond.* The licensed cartman or lighterman shall as a condition precedent to the issuance of a temporary identification card to his employee be required to post a bond in a penal sum, the amount to be determined by the district director, to guarantee return of the temporary identification card by the holder upon its withdrawal or upon issuance of a permanent identification card and to cover any loss or damage caused to the U.S. by the holder of the temporary identification card. The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.63 of this chapter and be in such amounts as determined by the district director. **[TD 84–213.]**

PART 113—CUSTOMS BONDS

Sec.

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Authority: (19 U.S.C. 66, 1551, 1565, 1624). Subpart E also issued under sec. 484, 46 Stat. 722, as amended (19 U.S.C. 1484). Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 84-213, 49 FR 41171, October 19, 1984, unless otherwise noted.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for cancelling the bond or charges against a bond.

Subpart A—General Provisions

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the district director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of Customs may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty for violation of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the Customs laws or regulations shall be known as Customs bonds.

(b) *Carnets.* A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in Part 114 of this chapter, as ordinarily acceptable without posting further security under the Customs laws or regulations requiring bonds.

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond approval.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a Customs transaction or multiple transactions must submit the bond on Customs Form 301. If the transaction(s) will occur in a single Customs district, the bond shall be filed with and approved by the district director of the district in which the transaction(s) will take place. If the transactions will occur in more than one district the bond may be filed with and approved by any district director. Only one continuous bond for a particular activity will be authorized for each principal. The district director will determine whether the bond is in proper form and provides adequate security for the transaction(s). A bond relating to repayment of/an erroneous drawback payment containing the bond conditions set forth in § 113.65 shall be filed with the appropriate regional commissioner for approval.

§ 113.12 Bond application.

(a) *Single entry bond application.* In order to insure that the revenue is adequately protected the district director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* If a person wants to secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a bond application, which may be in the form of a letter, shall be submitted to the district director.

(1) *Information required.* The application shall contain the following information:

(i) The general character of the merchandise to be entered; and

(ii) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs. The total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change shall be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the district director approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

> I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar shall be disregarded in computing the amount of a bond. The bond always shall be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) should at least consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with Customs demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of Customs and other laws and regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that Customs will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* The district directors and regional commissioners shall periodically review each bond filed in their respective district or region in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the district or regional commissioner determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if a district director or regional commissioner believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of Customs laws or regulations, he shall require additional security.

§ 113.14 Approved form of bond inadequate.

If the district director believes that none of the conditions contained in subpart G of this Part is applicable to a transaction sought to be secured, the district director shall draft conditions which will cover the transaction, but before execution of the bond the conditions shall be submitted to Headquarters, Attention: Director, Carriers, Drawback and Bonds Division, for approval.

§ 113.15 Retention of approved bonds.

All bonds approved by the district director, except the bond containing the agreement to pay court costs (condemned goods) (see § 113.72) shall remain on file in the district office unless the district director is directed in writing by the Director, Carriers, Drawback and Bonds Division, as to other disposition. The bond containing the agreement to pay court costs (condemned goods), shall be transmitted to the U.S. attorney, as required by § 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). The bond relating to repayment of erroneous drawback payment containing the conditions set forth in § 113.65 shall be retained in the regional office of the approving regional commissioner.

Subpart C—Bond Requirements

§ 113.21 Information required on the bond.

(a)(1) *Identification of principal and sureties.* The names of the principal and sureties and their respective places of residence shall appear in the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business shall appear.

(2) *Identification of trade names and unincorporated divisions of a corporate principal.* The principal may list on the bond trade names and the names of unincorporated divisions of the corporate principal which do not have a separate and distinct legal status who are authorized to use the bond in their own name.

(b) *Date of execution.* Each bond shall bear the date it was actually executed.

(c) *Statement of the amount.* The amount of the bond shall be stated in figures.

(d) *Use of abbreviations.* Abbreviations shall not be used except in dates and the state of incorporation of the principal or the surety.

(e) *Blank spaces on the bond.* Lines shall be drawn through all spaces and blocks on the bond which are not filled in.

§ 113.22 Witnesses required.

(a) *Generally.* The signature of each party to a bond executed by a noncorporate principal or surety shall be witnessed by two persons, who shall sign their names as witnesses, and include their addresses.

(b) *Witness for both principal and surety.* When two persons signing as witnesses act for both principal and surety. They shall so indicate by stating on the bond "as to both".

(c) *Corporate principal or surety.* No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§ 113.33 and 113.37 of this Part.

§ 113.23 Changes made on the bond.

(a) *Definition of the types of changes.* (1) *Modification or interlineation.* Modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures.* Alterations or erasures consist of minor changes, such as the correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing.* When erasures, alterations, modifications, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect shall be placed upon the bond.

(c) *After signing.* If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by Customs, the consent of all the parties shall be written on the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the Commissioner, no modification or interlineation shall be made on the bond after execution. When a modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by Customs.* Except in cases where a change in the bond is expressly authorized by regulations, or instructions from the Commissioner, the district director shall not permit a change as defined in paragraph (a) of this section after the bond has been approved by Customs. When changes are desired, a new bond is required, which, when approved, shall supersede the existing bond.

§ 113.24 Riders.

(a) *Types of riders.* The district director may accept the following types of bond riders.

(1) *Name change of principal.* A bond rider to change the name of a principal on a bond may be used only when the change in name does not change the legal identity or status of the principal. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider for a name change of the principal can not be used. A new bond would be required.

(2) *Address change.* A bond rider may be used to change the address of a principal on a bond.

(3) *Addition and deletion of trade names and unincorporated divisions of a corporate principal.* A bond rider may be

used to add to or delete from a bond trade names and the names of unincorporated divisions of a corporate principal which do not have a separate and distinct legal status.

(b) *Where filed.* A rider must be filed with the district director in whose district the bond was approved.

(c) *Attachment of rider to bond.* All riders expressly authorized by the Commissioner shall be securely attached to the related bond to prevent their loss or misplacement.

(d) *Format of Rider.* The riders shall be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this Part. The riders shall contain the following conditions:

(1) *Name change of principal.*

By this rider to the Customs Form 301, ____ (bond number), dated ____, executed by ____ (former name), as principal, ____ (importer number), the, ____ (new name), hereby certifies that it is the same entity formerly known as ____ (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under principal's former name. Principal and surety agree to be bound under this bond to the same extent as if this bond had been executed in the principal's new name. This rider is effective on _____ (date).

(2) *Address change.*

By this rider to Customs Form 301, ____ (bond number) executed on ____ (date), by ____ (principal's name), as principal, ____ (importer number), and ____ (surety's name and code), as surety, which is effective on ____ (date), the principal, surety or both, intend that the bond be amended to show ____ (new address) as their address. The principal, surety or both, as may be appropriate agree to be bound as though this bond has been executed with the new address(es) shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate principal.*

(i) *Addition rider.*

By this rider to the Customs Form 301, ____ (bond number), executed on ____ (date), by ____ (principal's name), as principal, ____ (importer number) and ____ (surety's name and code), as surety, which is effective on ____ (date), the principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act shall be considered to be the act of the principal.

(ii) *Deletion rider.*

By this rider to the Customs Form 301, ____ (bond number), executed on ____ (date), by ____ (principals name) as principal, ____ (importer number) and, ____ (surety's name and surety code), as surety, which is effective on ____ (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate Customs bond approval official.

§ 113.25 Seals.

When a seal is required, the seal shall be affixed adjoining the signatures of principal and surety, if individuals, and the corporate seal shall be affixed close to the signatures of persons signing on behalf of a corporation. Bonds shall be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 113.26 Effective dates of bonds and riders.

(a) *General.* Bonds including the application, if required by § 113.12, and riders may be filed up to 30 days before the effective date in order to provide adequate time for Customs administrative review and processing.

(b) *Single transaction bond.* A single transaction bond is effective on the date of the transaction identified on the Customs Bond, Customs Form 301.

(c) *Continuous bond.* A continuous bond is effective on the effective date identified on the Customs Bond, Customs Form 301.

(d) *Riders for name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal.* Riders for a name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal are effective on the effective date identified on the rider.

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 10 business days after the date the district office receives the rider. If the rider is not received 10 business days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the tenth business day after it is received in the district office.

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment in whose district or region the bond was approved. The termination shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received at the district or regional office. If no termination date is requested, the termination shall take effect on the tenth business day following the date of receipt of the request by the district director or regional commissioner in the case of bonds relating to repayment of erroneous drawback payment.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the district director in whose district the bond was approved or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment and the principal of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the district director, or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment, that a lesser time is reasonable under the facts and circumstances.

(c) *Effect of Termination.* If a bond is terminated no new Customs transactions shall be charged against the bond. A new bond in an appropriate amount on Customs Form 301,

containing the appropriate bond conditions set forth in subpart G of this Part, shall be filed before further Customs activity may be transacted.

Subpart D—Principals and Sureties

§ 113.30 Information pertaining to principals and sureties on the bond.

The general information pertaining to the principal and surety which must be given in the body of the bond is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.* The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety.* In executing a bond, a person may act as:

(1) Attorney in fact for both principal and surety;

(2) Surety and attorney in fact for the principal; or

(3) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

(a) *Names and partners on the bond*—(1) *In general.* Unless written notice of the full names of all partners in the partnership has been previously filed with the district director, or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds.

(2) *Limited partnerships.* Bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm on them. The bond must be accompanied by a copy of the partnership agreement. For this purpose, a partnership or a limited partnership means any business association recognized as such under the laws of the state where the association is organized. **[TD 86-204.]**

(b) *Execution.* Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(c) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. However, in the case of a limited partnership, the limited partners will not be bound by the actions of any other partner in the firm, except as provided for in the partnership agreement. **[TD 86-204.]**

§ 113.33 Corporations as principals.

(a) *Name of corporation on the bonds.* The name of a corporation executing a Customs bond as a principal, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.* The bond of a corporate principal shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney shall not be required if the person signing the bond on behalf of the corporation is known to the district director or regional commissioner to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature shall be prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required it shall conform to the requirements of subpart C, Part 141, of this chapter.

(d) *Bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the district director (unless exempted from filing by § 141.46 of this chapter), there shall be attached a power of attorney executed by an officer of the corporation whose authority to execute the power shall be shown as prescribed in paragraph (c) of this section.

(e) *Subsidiaries as co-principals.* The provisions of this section shall be applicable to each corporate subsidiary which joins its parent corporation by signing the bond as co-principal.

§ 113.34 Co-principals.

A bond with a co-principal may be used by a person having a distinct legal status (e.g., individual, partnership, corporation) to join another person with the same distinct legal status on the bond. A bond with a co-principal shall not be used to join an entity which does not have a distinct legal status (e.g. an unincorporated division of a corporation). However, an entity which does not have a distinct legal status may use another bond if listed on the bond by the principal at the time of execution or by subsequent rider (see § 113.24). A bond with co-principal may not be used to join different legal entities (e.g. an individual and a corporation, a partnership and a corporation).

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there shall be two sureties on the bond, unless the district director is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety.* (1) *Residency and citizenship.* Each individual surety on a Customs bond must be both a resident and citizen of the U.S.

(2) *Married women.* A married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity.

(3) *Granting of power of attorney.* Any individual other than a married woman in a state where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. Unless the power is unlimited, all persons to which the power relates shall be named.

(4) *Property requirements.* Each individual surety must have property available as security within the limits of the Customs district in which the contract of suretyship is to be

approved. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned within the limits of the Customs district and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the district director may require.

(d) *Determination of financial responsibility.* An individual surety shall not be accepted on a bond until the district director is satisfied as to the financial responsibility of the individual. The district director may refer the matter to the special agent-in-charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuancy of financial responsibility.* In order to follow the continued solvency and financial responsibility of individual sureties, the district director shall require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.

A member of a partnership shall not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this Part.

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. The Circular shall be furnished annually to all district directors by the Secretary of the Treasury. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by ***Federal Register*** notice and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.* The name of a corporation executing a Customs bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.* The agent or attorney acting for a corporate surety shall have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Social security number of agent or attorney on the bond.* In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney shall place his/her social security number, as it appears on the corporate surety power of attorney.

(e) *Signature and seal of the corporation on the bond.* A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(f) *Two or more corporate sureties as sureties on the same obligation.* Two or more corporate sureties may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate surety may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11). Each corporate surety shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

Corporate Sureties Agreement for Limitation of Liability

____ (name of surety), ____ (surety code), a surety company incorporated under laws of the State of ____, authorized to conduct a surety business in the State of ____, and having its principal place of business at ____ (address), and ____ (names of surety), ____ (surety code), a surety company incorporated under the laws of the State of ____ and having its principal place of business at ____ (address), as sureties, and ____ (name of principal), as principal, are jointly and severally obligated to the U.S. in the amount of ____ ($) on a bond executed on ____ (date of execution) with each surety jointly and severally obligated with the principal in the amounts listed below and no more:

____ (name of surety) ____
($)
____ (name of surety) ____
($)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this ____ day of ____ 19____
____Principal
____Surety
____Surety
____District Director (Regional Commissioner)

(g) *Power of attorney for the agent or attorney of the surety.* Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents.* The corporate surety power of attorney shall be executed on Customs Forms 5297, and shall contain the following information:

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and social security number of agent or attorney,

(iii) District(s) in which the agent or attorney is authorized to act,

(iv) Date of execution of power of attorney,

(v) Seal of the corporate surety,

(vi) Signature of any two principal officers of corporation, and

(vii) Dollar amount of authorization.

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 shall be filed at the district office unless the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, in which case the corporate surety power of attorney must be submitted in duplicate. The power of attorney may provide authority for an agent or attorney in any number of districts. If authorized to be filed at Customs port, the port director shall send the original of the power of attorney to the Customs district office. The Customs district offices shall periodically issue to all ports within their district computer printouts reflecting all corporate powers of attorney valid for use within the district. If the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, a copy of the power of attorney shall be retained at the port where the power of attorney was filed until the first computer printout reflecting the power of attorney has been received from the district office. If a port has been delegated the authority to approve bonds, the copy of the power of attorney retained at the port can be used in connection with bond approval at the port for bonds executed by the person covered by the corporate surety power of attorney, until the computer printout is received. The original of the corporate surety power of attorney shall be retained at the district office with jurisdiction over the location where the corporate surety power of attorney was submitted.

(3) *Use at port where power of attorney not filed before receipt of computer printout.* If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one where the power of attorney was filed, before the first computer printout reflecting this power of attorney is received, the Customs Form 5297, shall be filed in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, shall provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney shall expire when the first computer printout reflecting this power of attorney is received.

(4) *Term and revocation.* Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on Customs Form 5297. The revocation shall take effect on the close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the district office.

(5) *Change on the power of attorney.* No change shall be made on the Customs Form 5297 after it has been approved by Customs except the following: (i) Grantee name change, (ii) grantee address change, and (iii) the addition of district(s) to the corporate surety power of attorney on file. To make any other change to the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another Customs bond.* No person shall be accepted as surety on any Customs bond while in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond.* A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of bond by district director.* A district director may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the district director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of § 177.11 from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(2) *Nonacceptance of bond by regional commissioner.* A regional commissioner may, when he believes the circumstances warrant, issue instructions to the district directors within his region that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof in more than one district in his region.

(3) *Nonacceptance of bond upon instructions by Commissioner.* The Commissioner may, when be believes the circumstances warrant, issue instructions to the district directors and regional commissioners that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(4) *Notice of surety.* The appropriate Customs officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(5) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds the appropriate Customs officer shall notify the Director, Carriers, Drawback and Bonds Division, Customs Headquarters. Notice shall be given to the importing public by posting a copy of the decision in the customhouse. The decision shall also be published in the ***Customs Bulletin.***

(6) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(7) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c) (1),

(2), and (3) of this section shall be consistent with the requirements of this section.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a district director or regional commissioner is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the district director or regional commissioner may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570. The fact that collection proceedings have been, or are to be, started on a bond does not preclude use of this procedure if the district director or regional commissioner believes such action is warranted.

(a) *Report to Headquarters.* A district director or regional commissioner shall send the following evidence to Headquarters, Attn: Director, Carriers, Drawback and Bonds Division. If the report is from a district director it shall be submitted through the appropriate regional commissioner of Customs.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the district director or regional commissioner showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Carriers, Drawback and Bonds Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The district director and regional commissioner will be informed in writing of Headquarters action regarding their request for removal of the surety.

§ 113.40 Acceptance of cash deposits or obligations of the U.S. in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the district director is authorized to accept U.S. money, U.S. bonds (except for savings bonds), U.S. certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell U.S. obligations on default.* At the time of deposit of any obligation of the U.S., other than U.S. money, with the district director or regional commissioner, the obligor shall deliver a duly executed power of attorney and agreement authorizing the district director or regional commissioner, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND
AGREEMENT
(FOR CORPORATION)

____ (name of corporation) a corporation duly incorporated under the laws of the State of ____ and having its principal office in the City of ____, State of ____, as authorized by a resolution of the board of directors of the corporation, passed on the ____ day of ____, 19____, a duly certified copy of which is attached, does constitute and appoint ____ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

_____

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the U.S., executed on the date of ____ ____, 19____, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in a case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by the agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this ____ day of ____ 19____.
[Corporate seal.]
By _____

Before me, the undersigned, a notary public within and for the County of ____, in the State of ____ (or the District of Columbia), personally appeared ____ (name and title of officer) and for and in behalf of said ____, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ____ day of ____, 19____.
[Notarial seal.]
Notary Public _____

Note.—Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of U.S. money on default.* If cash is deposited in lieu of sureties on the bond, the district director or regional commissioner, as appropriate, is authorized to apply the cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the "Missing Documents" box (box 16) on Customs Form 7501 the missing document, whether the importer gives a bond or stipulates to produce the document.

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given shall be delivered within 120 days from the date of notice from Customs requesting such document, or within any extension of such time which may be granted pursuant to § 133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely. [TD 85–167.]

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the district director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months. [TD 85–167.]

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document shall be allowed by the district director if the application is received later than 2 months after the expiration of the period of the bond, and any extension shall not be allowed by the district director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be cancelled.

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.* The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.* The assent of the sureties shall be obtained before any extension of the period prescribed in a bond other than an extension authorized by law or regulation, is allowed.

§ 113.45 Charge for production of a missing document made against a continuous bond.

When a continuous bond secures the production of a missing document and the bond is breached by the principal's failure to timely produce that document, the claim for liquidated damages shall be in an amount equal to the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Section 172.22 of this chapter sets forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of Customs may authorize the cancellation of any bond provided for in this part or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as may be deemed sufficient.

§ 113.52 Failure to satisfy the bond.

If any Customs bond, except one given only for the production of free-entry or reduced-duty documents (see §§ 113.43(c) and 172.22(c) of this chapter), is unsatisfied upon the expiration of 90 days after liability has accrued under the bond, the matter shall be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle the matter.

§ 113.53 Waiver of Customs requirement supported by a bond.

(a) *Waiver by the Commissioner of Customs.* When a Customs requirement supported by a bond is waived by the Commissioner of Customs, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner may deem sufficient.

(b) *Waiver by the district director.* When a Customs requirement supported by a bond is waived by the district director pursuant to the authority conferred by these regulations, the waiver shall be unconditional.

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds.* Section 172.31 of this chapter sets forth provisions relating to the cancellation of charges against the bond when it is determined that the act or omission forming the basis for the claim for liquidated damages did not in fact occur.

(b) *Carnets.* Section 114.34 of this chapter sets forth provisions relating to the cancellation of erroneous charges involving carnets.

§ 113.55 Cancellation of export bonds.

(a) *Manner of cancellation.* A bond to assure exportation as defined in § 101.1 of this chapter may be cancelled:

(1) *Upon exportation.* Upon the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if the certificate is required by the district director.

(2) *Upon payment of liquidated damages.* Upon the payment of liquidated damages.

(b) *Cancellation of bond charges of an international carrier.* The conditions of the bond of an international carrier may be considered as having been complied with upon the

production of the applicable documents listed in paragraph (a)(1) of this section.

(c) *Foreign landing certificate.* A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing. Landing certificates are required in the following cases:

(1) *Mandatory.* A landing certificate shall be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of § 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317)), or machinery for vessels.

(2) *Optional with the district director.* A landing certificate may be required by the district director for merchandise exported from the U.S., or residue cargo, when a certificate is deemed necessary for the protection of the revenue.

(3) *Waiver.* Except as provided in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of Customs through the district director, accompanied by such proof of exportation and landing abroad as may be available.

(d) *Articles less than $10.* In the case of articles for which the ordinary Customs duty estimated at the time of entry did not exceed $10 and which are exported without Customs supervision, but within the period during which the articles are authorized to remain in the Customs territory of the U.S. under bond (including any lawful extension), the bond may be cancelled upon production of evidence of exportation satisfactory to the district director.

Subpart G—Customs Bond Conditions

§ 113.61 General.

Each section in this subpart identifies specific coverage for a particular Customs activity. When an individual or organization files a bond with Customs the activity in which they plan on engaging will be identified on the bond. The bond conditions listed in this subpart which correspond to that activity will be incorporated by reference into the bond.

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry shall contain the conditions listed in this section and may be either a single entry or a continuous bond, except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond.

Basic Importation and Entry Bond Conditions

(a) *Agreement to Pay Duties, Taxes, and Charges.* (1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the U.S., the obligors (principal and surety, jointly and severally) agree to: **[TD 88-72.]**

(i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and

(ii) Pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

(2) If the principal enters any merchandise into a Customs bonded warehouse, the obligors agree;

(i) To pay any duties, taxes, and charges found to be due on any of that merchandise which remains in the warehouse at the expiration of the warehousing time limit set by law; and

(ii) That the obligation to pay duties, taxes, and charges on the merchandise applies whether it is properly withdrawn by the principal, or by the principal's transferee, or is unlawfully removed by the principal or any other person, without regard to whether the merchandise is manipulated, unless payment was made or secured to be made by some other person.

(3) Under this agreement, the obligation to pay any and all duties, taxes, and charges due on any entry ceases on the date the principal timely files with the district director a bond of the owner in which the owner agrees to pay all duties, taxes, and charges found due on that entry; provided a declaration of the owner has also been properly filed.

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 448(b) or released before completion of the entry under 19 U.S.C. 484(a), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

(1) Determine whether the merchandise may be released from Customs custody;

(2) Properly assess duties on the merchandise;

(3) Collect accurate statistics with respect to the merchandise; and

(4) Determine whether applicable requirements of law and regulation are met.

(c) *Agreement to Produce Documents and Evidence.* If merchandise is released conditionally to principal before all required documents or other evidence is produced, the principal agrees to furnish Customs with any document or evidence as required by law or regulation, and within the time specified by law or regulations.

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from Customs custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the U.S. is determined, the principal agrees to redeliver timely, on demand by Customs, the merchandise released if it:

(1) Fails to comply with the laws or regulations governing admission into the U.S.;

(2) Must be examined, inspected, or appraised as required by 19 U.S.C. 499; or

(3) Must be marked with the country of origin as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later).

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the U.S. is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to the

merchandise in order to comply with the law and regulations governing its admission into the U.S. within the time period set in the notification.

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a Customs officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

(2) Transfer the merchandise to another place on receipt of instructions from Customs made before release; and

(3) Keep any Customs seal or cording on the merchandise intact until the merchandise is examined by Customs.

(g) *Reimbursement and Exoneration of the U.S.* The obligors agree to:

(1) Pay the compensation and expenses of any Customs officer, as required by law or regulation; and

(2) Exonerate the U.S. and its officers from risk, loss, or expense arising out of principal's importation, entry, or withdrawal of merchandise.

(h) *Agreement on Duty-Free Entries or Withdrawals.* If the principal enters or withdraws any merchandise, without payment of duty and tax, or at a reduced rate of duty and tax, as permitted under the law, the principal agrees:

(1) To use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) If a fishing vessel, to present the original approved application to Customs within 24 hours on each arrival of the vessel in the Customs territory of the U.S. from a fishing voyage;

(3) To furnish timely proof to Customs that any merchandise entered or withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) To keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by Customs.

(i) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to the Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations in this chapter applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation. **[T.D. 88-46.]**

(j) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions (a), (g), or (i), the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise. **[T.D. 88-46.]**

(2) It is understood and agreed that whether the default involves merchandise is determined by Customs and that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on agreements in this condition other than condition (a) or (g) and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

§ 113.63 Basic custodial bond conditions.

A basic custodial bond shall contain the conditions listed in this section and shall be a continuous bond.

Basic Custodial Bond Conditions

(a) *Receipt of Merchandise.* The principal agrees:

(1) To operate as a custodian of any bonded merchandise received and to comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise;

(2) To accept only merchandise authorized under Customs Regulations;

(3) To maintain all records required by regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized Customs officer;

(4) If authorized to operate a container station under the Customs Regulations, to report promptly to Customs each arrival of a container and its merchandise by delivery of the manifest and the application for transfer, or by other approved notice.

(b) *Carriage and Safekeeping of Merchandise.* The principal agrees:

(1) If a bonded carrier, to use only authorized means of conveyance;

(2) To keep safe any merchandise placed in its custody including, when approved by Customs, repacking and transferring such merchandise when necessary for its safety or preservation; and

(3) To comply with Customs Regulations relating to the handling of bonded merchandise.

(c) *Disposition of Merchandise.* The principal agrees:

(1) If a bonded carrier, to report promptly the arrival of merchandise at the destination port by delivering to Customs the manifest or other approved notice;

(2) If a cartage or lighterage business, to deliver promptly and safely to Customs any merchandise placed in the principal's custody together with any related cartage and lighterage ticket and manifest;

(3) To dispose of merchandise in a manner authorized by Customs Regulations; and

(4) To file timely with Customs any report required by Customs Regulations.

(d) *Agreement to Redeliver Merchandise to Customs.* If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. It is understood that the demand for redelivery shall be made no later than 30 days after Customs discovers the improper delivery.

(e) *Compliance with Licensing and Operating Requirements.* The principal agrees to comply with all Customs laws and regulations relating to principal's facilities, conveyances, and employees.

(f) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to

Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation. **[TD 88-46.]**

(g) *Reimbursement and Exoneration of the U.S.* The principal and surety agree to:

(1) Pay the compensation and expenses of any Customs officer as required by law or regulation;

(2) Pay the cost of any locks, seals, and other fastenings required by Customs Regulations for securing merchandise placed in the principal's custody;

(3) Pay for any expenses connected with the suspension or termination of the bonded status of the premises;

(4) Exonerate the U.S. and its officers from any risk, loss, or expense arising out of the principal's custodial operation; and

(5) Pay any charges found to be due Customs arising out of the principal's custodial operation. **[TD 86-178.]**

(h) *Consequence of Default.* (1) If the principal defaults on conditions (a) through (e) in this agreement, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. **[TDs 88-46, 88-72.]**

(2) It is understood and agreed that the amount to be collected under conditions (a) through (e) of this agreement shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on conditions (a) through (e) in this agreement and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

§ 113.64 International carrier bond conditions.

A bond for international carriers shall contain the conditions listed in this section and may be either a single entry or continuous bond.

International Carrier Bond Conditions

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs.

(b) *Agreement on Unlading, Safekeeping, and Disposition of Merchandise, Supplies, Crew Purchases, Etc.* The principal agrees to comply with all laws and Customs Regulations applicable to unlading, safekeeping, and disposition of merchandise, supplies, crew purchases, and other articles on board the vehicle, vessel, or aircraft; and to redeliver the foregoing to Customs upon demand as provided by Customs Regulations. If principal defaults, obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(c) *Agreement to Deliver Export Documents.* If the principal's vessel, vehicle, or aircraft is granted clearance without filing a complete outward manifest and all required export documents, the principal agrees to file timely the required manifest and all required export documents. If the principal defaults, the obligors agree to pay liquidated damages of $50 per day for the first 3 days, and $100 per day thereafter, up to $1,000 in total.

(d) *Agreement to comply with Customs Regulations applicable to Customs security areas at airports.* If access to Customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the Customs Regulations applicable to Customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(e) *Exoneration of the U.S.* The obligors agree to exonerate the U.S. and its officers from any risk, loss, or expense arising out of entry or clearance of the carrier, or handling of the articles on board.

(f) *Unlawful disposition.* (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle, or aircraft for exportation or to be otherwise disposed of without written permission from Customs, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to Customs within 30 days, upon demand made within 10 days of Customs discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any Customs demand for redelivery made within 10 days of Customs discovery that there is reasonable cause to believe that the merchadise was exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered. **[TDs 87-124, 88-46, 88-72.]**

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback shall contain the conditions listed in this section and may be either a single entry or continuous bond.

Repayment of Erroneous Drawback Payment Bond Conditions

(a) *Agreement Under Exporter's Summary Procedure.* If the principal is permitted to file drawback claims under the exporter's summary procedure and the principal's drawback

claims are paid before a final determination that the principal:

(1) Is entitled to the drawback claimed,

(2) Correctly described the exported articles in the claim,

(3) Correctly stated the facts of exportation in the claim;

the principal and surety, jointly and severally agree to refund, on demand, any money claimed by Customs to have been erroneously paid as a result of an incorrect statement on the drawback claim, and

(4) The principal agrees to pay any charges due Customs as provided by law or regulation. **[TD 86–178.]**

(b) *Agreement Under Accelerated Payment of Drawback.* If the principal receives an accelerated payment of drawback based on the principal's calculation of the drawback claim, the principal and surety, jointly and severally agree to refund on demand the full amount of any overpayment, as determined on liquidation of the drawback claim. **[TD 88–72.]**

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic shall contain the conditions listed in this section and shall be a continuous bond.

Control of Containers and Instruments of International Traffic Bond Conditions

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the Customs territory of the U.S. an instrument of international traffic without entry and without payment of duty, as provided by the Customs Regulations and § 322(a), Tariff Act of 1930, as amended, the principal agrees to:

(1) Report promptly to Customs when the instrument is diverted to point-to-point local traffic in the Customs territory of the U.S. or when the instrument is otherwise withdrawn in the Customs territory of the U.S. from its use as an instrument of international traffic;

(2) Promptly enter the instrument unless exempt from entry; and

(3) Pay any duty due on the instrument at the rate in effect and in its condition on the date of diversion or withdrawal. **[TD 88–72.]**

(b) *Agreement to Comply With the Provisions of subheading 9801.00.10 or 9803.00.50, A Harmonized Tariff Schedule of the United States (HTSUS).* If the principal gets free release of any serially numbered shipping container classifiable under subheading 9801.00.10 or 9803.00.50, HTSUS, the principal agrees:

(1) Not to advance the value or improve its condition abroad or claim (or make a previous claim) drawback on, any container released under subheading 9801.00.10, HTSUS;

(2) To pay the initial duty due and otherwise comply with every condition in subheading 9803.00.50, HTSUS, on any container released under that item;

(3) To mark that container in the manner required by Customs;

(4) To keep records which show the current status on that container in service and the disposition of that container if taken out of service; and

(5) To remove or strike out the markings on that container when it is taken out of service or when the principal transfers ownership of it.

(c) *Consequence of Default.* (1) If the principal defaults on agreements in these conditions, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs.

(3) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs. **[TDs 88–72, 89–1.]**

§ 113.67 Commercial gauger and commercial laboratory bond conditions.

Commercial Gauger Bond Conditions

(a) *Commercial gauger bond conditions.* A commercial gauger's bond shall contain the conditions listed in this section and shall be a continuous bond.

(1) If the principal is a commercial gauger whose reports of gauging or whose samples are accepted for Customs purposes, the principal agrees to:

(i) Gauge or sample merchandise according to the standards and procedures set out in the Customs Regulations;

(ii) Abide by the terms of the Commercial Gauger Agreement [see § 151.13(b)(9)] and by the requirements set out in §§ 151.13 and 151.14 of this chapter; and

(iii) Submit properly any required report, proof, abstract, or sample to Customs.

(2)(i) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based on the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

Commercial Laboratory Bond Conditions

(b) *Commercial laboratory bond conditions.* A commercial laboratory's bond shall contain the conditions listed in this subsection and shall be a continuous bond.

(1) If the principal is a commercial laboratory whose laboratory analysis reports are accepted for Customs purposes, the principal agrees to:

(i) Conduct laboratory analyses according to the standards and procedures set out in the Customs Regulations;

(ii) Abide by the terms of the Commercial Laboratory Agreement [see § 151.13(b)(9)] and by the requirements set out in §§ 151.13 and 151.14 of this chapter, and

(iii) Submit properly any required report, proof, abstract, or sample to Customs.

(2)(i) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based on the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. [TDs 87-39, 88-72.]

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act shall contain the conditions listed in this section and shall be a single entry bond.

Wool and Fur Products Labeling Acts and Fiber Products Identification Act

(a) If the principal obtains release from Customs custody of any wool or fur product (hereafter "merchandise") that is subject to the provisions of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the principal guarantees that the merchandise complies with every provision of those Acts, as applicable.

(b) If any of the released merchandise does not comply with each applicable provision of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the obligors (principal or surety, jointly and severally) agree to pay liquidated damages equal to two times the value of the merchandise involved in the default and duty thereon. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a. [TD 88-72.]

§ 113.69 Production of bills of landing bond conditions.

A bond to produce a bill of lading shall contain the conditions listed in this section and shall be a single entry bond.

Production of Bill of Lading Bond Conditions

If the principal obtains release of any merchandise before filing a valid bill of lading on that merchandise with Customs, the obligors (principal and surety, jointly and severally) agree to:

(a) Produce timely a valid bill of lading for the merchandise; and

(b) Relieve the U.S. and its employees from all liability, to indemnify the U.S. and its employees against loss, and defend any action brought on a claim for loss based on the release without production of a valid bill of lading. [TD 88-72.]

§ 113.70 Bond condition to indemnify U.S. for detention of copyrighted material.

A bond to indemnify the U.S. for detention of copyrighted material shall contain the conditions listed in this section and shall be a single entry bond.

Bond Condition To Indemnify U.S. for Detention of Copyrighted Material

If Customs detains any articles alleged by the principal to be a piratical copy of material covered by the principal's copyright pending a final determination whether the articles are prohibited entry under the copyright laws, the obligors (principal and surety, jointly and severally) agree to hold the U.S. and its employees, and the importer or owner of those articles, jointly and severally, harmless from any material depreciation of those articles and any loss or damage caused by the detention in the event it is finally determined that the articles are not a piratical copy of the material. [TD 88-72.]

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality shall contain the conditions listed in the section and shall be a single entry bond.

Bond Condition To Observe Neutrality

(a) If clearance is granted to the principal's vessel, which is armed or is built for a war-like purpose, with a cargo of arms and munitions, so that it is likely to be used to commit hostilities against people or countries with whom the Government of the U.S. is at peace, the principal guarantees that the vessel will not be used to commit hostilities against any country, state, colony, or people with whom the Government is at peace.

(b) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to twice the value of the vessel and cargo. [TD 88-72.]

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) shall contain the condition listed in this section and shall be a single entry bond.

Bond Condition To Pay Court Costs (Condemned Goods)

If any seized goods belonging to principal are condemned the obligors (principal and surety, jointly and severally) agree to pay all costs of the condemnation proceedings. [TD 88-72.]

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator shall contain the conditions listed in this section and shall be a continuous bond.

Foreign Trade Zone Operator Bond Conditions

If the principal is authorized to operate a foreign trade zone or subzone:

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone; and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default, or such other amount as may be authorized by law or regulations. **[TD 88-72.]**

(b) *Agreement to Pay Duties, Taxes, and Charges.* The obligors agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the foreign trade zone or subzone, which is found to be missing from the zone or cannot be accounted for in the zone, it being expressly understood and agreed that the amount of said duties, taxes, and charges shall be determined solely by Customs.

(c) *Reimbursement and Exoneration of the U.S.* The obligors agree to:

(1) Exonerate the U.S. and its officers from any risk, loss, or expense arising from the principal's operation of the foreign trade zone or subzone;

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulations.

(d) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears. **[TDs 84-213, 86-16.]**

Appendix A—Airport Customs Security Area Bond

AIRPORT CUSTOMS SECURITY AREA BOND

_____ (name of principal) of _____ and _____ (name of surety) of _____ are held and firmly bound unto the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

Whereas, the principal (including the principal's employees, agents, and contractors) desires access to Customs airport security areas located at _____ Airport during the period of one year beginning on the _____ day of _____, 19____, and ending on the _____ day of _____, 19____, both dates inclusive;

Now, therefore, the condition of this obligation is such that—

The principal agrees to comply with the Customs Regulations applicable to Customs security areas at airports.

If the principal defaults on the condition of this obligation, the principal and surety, jointly and severally, agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

Signed, sealed, and delivered in the presence of—

_____

Name

_____

Address

_____

Name

_____

Address

_____

Principal (Seal)

_____

Name

_____

Address

_____

Name

_____

Address

_____

Name

_____

Address

_____

Principal (Seal) **[TD 88-46.]**

PART 114—CARNETS

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Authority: 19 U.S.C. 66, 1202 (Gen. Note 9, HTSUS), 1623, 1624.

Source: T.D. 70-134, 35 FR 9261, June 16, 1970, unless otherwise noted.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the U.S. covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond. **[TD 70-134.]**

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of Part 114:

(a) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(b) *Issuing association.* "Issuing association" means an association approved by the Commissioner for the issue of carnets in the Customs territory of the U.S. under a Customs Convention to which the U.S. has acceded.

(c) *Guaranteeing association.* "Guaranteeing association" means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the U.S. under a Customs Convention to which the U.S. has acceded.

(d) *A.T.A. carnet.* "A.T.A. carnet" (Admission Temporaire—Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (TIAS 6631). **[TD 71-70.]**

(e) *Reserved* **[TD 82-116.]**

(f) *TIR carnet.* "TIR carnet" (Transport International Routier) means the document reproduced as Annex 1 to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets. **[TDs 71-70, 85-180.]**

§ 114.2 Customs Conventions.

The regulations in this part relate to carnets provided for in the following Customs Conventions:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) Reserved **[TD 82-116.]**

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633. **[TDs 71-70, 85-180.]**

§ 114.3 Carnets.

(a) *Use.* A carnet issued in conformity with the provisions of a Convention identified in § 114.2 and with the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention and as a bond for the performance of acts in compliance with the provisions of such Convention and the Customs statutes and regulations which are involved. Such carnet shall: **[TD 71-70.]**

(1) Show the period for which it is valid,

(2) Be fully completed in accordance with the provisions of the Convention which provides for its issuance, and

(3) Include an English translation whenever the goods covered by a carnet are described in another language.

(b) *Area of validity.* Carnets are valid in the customs territory of the U.S. which includes only the States, the District of Columbia, and Puerto Rico. **[TD 71-70.]**

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Documents to be furnished.* Before an association may be approved to serve as issuing association or guaranteeing association in the U.S. with respect to carnets authorized under a Customs Convention to which the U.S. has acceded, such association shall furnish the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention under which carnets are to be issued or guaranteed. Evidence of affiliation with an appropriate international organization shall also be required if affiliation with such an organization is required by the Convention under which carnets are to be issued or guaranteed. **[TD 71-70.]**

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to which the U.S. has acceded will be published in the ***Federal Register*** by the Commissioner.

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the

applicable Customs Convention; or in the customs regulations; or upon termination of the affiliation with an appropriate international organization required by § 114.11(a). Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance. [TD 71-70.]

(b) *Withdrawal.* To be relieved of future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association, or of the withdrawal of an approved guaranteeing association, with respect to a Customs Convention to which the U.S. has acceded will be published in the ***Federal Register*** by the Commissioner. [TD 71-70.]

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in § 114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered, or temporarily entered and transportated, under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material which includes:

(i) Commercial samples, or

(ii) Motion picture advertising films not exceeding 16 mm. consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogs. There shall be presented with each carnet covering motion picture advertising films a statement showing how each of the following requirements is met. The films must:

(A) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(B) Be of a kind suitable for exhibition to the public; and

(C) Be imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

(b) Reserved [TD 82-116.]

(c) *TIR carnet*—(1) *Use.* The TIR carnet may be accepted at any port of entry for the transport of merchandise in road vehicles or in containers, even if the containers, without being loaded on road vehicles, are carried by other means of transport for part of the journey between the customs offices of departure and destination. The TIR carnet may also be accepted for the transport of "heavy or bulky goods" as defined in Article 1 of the TIR Convention. The TIR carnet covers the transportation of merchandise for customs purposes only. Road vehicles transporting merchandise under cover of a TIR carnet must also comply with all other applicable requirements of Federal and State agencies concerned with the regulations of such vehicles and their personnel. [TD 71-70.]

(2) *Taken on charge.* A TIR carnet is "taken on charge" by Customs when it is accepted as a transportation entry and when the shipment covered thereby is receipted for by the bonded carrier (see §§ 18.1, 18.2, and 18.10(a) of this chapter). Until the carnet is "taken on charge," the guaranteeing association shall have no liability to the U.S. under the carnet.

(d) *Excess liability.* When the total of duties and taxes on any shipment covered by a carnet exceeds the amount for which the guaranteeing association is liable, the excess constitutes a charge against the carrier's bond. [TD 82-116.]

§ 114.23 Maximum period.

(a) *A.T.A. carnet.* No A.T.A. carnet with a period of validity exceeding 1 year from date of issue shall be accepted. This period of validity cannot be extended. [TDs 71-70, 82-116, 85-180.]

(b) *TIR carnet.* A TIR carnet may be accepted without limitation as to time provided it is initially "taken on charge by a customs administration (U.S. or foreign) within the period of validity shown on its front cover." [TD 71-70.]

§ 114.24 Additions.

When an A.T.A. carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto. [TD 82-116.]

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. carnet while the goods which it covers are in the Customs territory of the U.S., the district director of Customs at the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the district director determines that the description of merchandise in the replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced. [TD 82-116.]

§ 114.26 Discharge, nonacceptance, or cancellation of carnets.

(a) *Unconditional discharge.* An A.T.A. carnet shall be discharged unconditionally by the district director of customs when he is satisfied that all merchandise covered thereby is reexported or destroyed. A TIR carnet shall be discharged unconditionally when all merchandise covered thereby has been properly entered, placed in general order, or exported under customs supervision. In all other cases, any discrepancy shall be noted on the appropriate counterfoil, and action shall be taken in accordance with § 10.39 or § 18.6 of this chapter. [TDs 71-70, 82-116.]

(b) *Effect of discharge.* When a district director has discharged a carnet unconditionally by completion of the appropriate counterfoil, no claim may be brought against the

guaranteeing association for payment under the carnet unless it can be established that the discharge was obtained improperly or fraudulently or, in the case of an A.T.A. carnet, that there has been a breach of the conditions of temporary importation. **[TDs 71-70, 82-116.]**

(c) *Nonacceptance or cancellation of TIR carnets.* If a TIR carnet presented to Customs is not accepted, it shall be § 114.22(c)(2)). If merchandise not required to be transported in bond moving under cover of a TIR carnet is not exported, the carnet shall be stamped "Cancelled." **[TDs 71-70, 82-116.]**

Subpart D—Miscellaneous

§ 114.31 Restrictions.

(a) *Mail importations.* Carnets shall not be accepted for importations by mail. **[TD 71-70.]**

(b) *Temporary importations.* Merchandise not entitled to temporary importation under bond shall not be imported under cover of an A.T.A. carnet. **[TDs 71-70, 85-180.]**

(c) *Transportation in bond.* Except as provided in § 18.43 of this chapter, merchandise not entitled to transportation in bond shall not be transported under cover of a TIR carnet. **[TD 71-70.]**

§ 114.32 Samples for taking orders.

A.T.A. carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the U.S., as well as for samples imported by a natural person resident in the territory of another contracting party to the A.T.A. Convention. **[TD 82-116.]**

§ 114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

§ 114.34 Cancellation of erroneous charges.

(a) *TIR carnet.* When it is determined that liquidated damages assessed or paid for any shortage, irregular delivery, or nondelivery of merchandise covered by a TIR carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded, as provided by § 18.8 of this chapter. **[TD 74-227.]**

(b) *A.T.A. carnet.* When it is determined that liquidated damages assessed or paid for failure to properly reexport or destroy merchandise temporarily imported under cover of an A.T.A. carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded as provided by § 10.39 of this chapter. **[TD 82-116.]**

(c) *Determination dependent upon a construction of law.* When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling by the Commissioner of Customs decisive of the issue. Approval of the Commissioner shall be requested in all doubtful cases. (See § 172.31 of this chapter.)

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

Source: T.D. 86-92, 51 FR 16161, May 1, 1986, unless otherwise noted.

Subpart A—General

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent authorities of the country in which the owner or carrier is a resident or is established, and that containers should be either similarly approved, or approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of the country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle owner or operator is established or located, or where the vehicle is registered. Such approval under the TIR Convention, 1975, or, for containers, the Customs Convention on Containers, 1972, may be accomplished by the competent authority of the country in which the owner or operator is able to produce the conveyance. The 1975 TIR Convention and the Customs Convention on Containers, 1972, also provide that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval.

The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purpose of this part:

(a) *Certifying Authority.* "Certifying Authority" means a nonprofit firm or association, incorporated or established in the U.S., which the Commissioner finds competent to carry out the functions of this part and which he designates to certify containers and road vehicles for international transport under Customs seal.

(b) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(c) *Container.* "Container" means an article of transport equipment (lift van, portable tank, or other similar structure).

(1) Fully or partially enclosed to constitute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer.* "Manufacturer" means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype.* "Prototype" means a sample unit of a series of identical containers or road vehicles all built, so far as practical, under the same conditions.

(f) *Road vehicle.* "Road Vehicle", as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR/Container Plan.* "Customs and TIR/Container Plan" means the designer's drawing of a vehicle (for TIR purposes) or container (for TIR and Container Convention purposes) that illustrates each requirement in §§ 115.30, 115.40, 115.51, or 115.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR/Container Convention shall apply in the event of conflict between it and an earlier TIR/Container Convention covered by these regulations.

Subpart B—Administration

§ 115.6 Designated Certifying Authorities.

(a) The American Bureau of Shipping, 45 Eisenhower Dr., Paramus, New Jersey 07652.

(b) International Cargo Gear Bureau, Inc., 17 Battery Place, New York, New York 10004.

(c) The National Cargo Bureau, Inc., One World Trade Center, Suite 2757, New York, New York 10048.

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation as Certifying Authority may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

For the purposes of this section, an extended production run shall be considered a continuous run of many units over long periods of time, as well as a new run following the completion of a previous run.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or, otherwise, at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of Part 1, Annex 7, TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as described in Appendix 1 to Part II, Annex 7 of the TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972, for all containers manufactured in conformity with the specifications of the type of

container approved. This certificate shall comply with the model certificate in Appendix 2, Part II, Annex 7 of the TIR Convention, 1975, and Appendix 2 of Annex 5 of the Customs Convention on Containers, 1972.

(c) *After manufacture.* The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in Part 1, Annex 7, TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in Appendix 3, Part II, Annex 7, TIR Convention, 1975, and Appendix 3, Annex 5, Customs Convention on Containers, 1972.

(d) *Supplementary examinations.* If a container approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more containers during the manufacturing process, or by other means, that such containers continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. For the purposes of this section, an extended production run shall be considered as a continuous run of many units over long periods of time, as well as a new run following completion of a previous run.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§ 115.29, 115.31, 115.38, and 115.41, and road vehicles that are approved in accordance with the procedures contained in §§ 115.49, 115.52, 115.63, and 115.66 of this part.

(a) *Road vehicles.* A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval, if satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers.*—(1) *Approval after Manufacture.* A Certifying Authority shall issue a certificate of approval conforming to the model in Appendix 3, Part I' to Annex 7 of the TIR Convention, 1975, and Appendix 3 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved at a stage after manufacture, when it has been ascertained that the containers comply with the technical conditions prescribed in Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for the number of containers approved.

(2) *Design type approved.* A Certifying Authority shall issue a single certificate of approval conforming to the model in Appendix 2, Part II to Annex 7 of the TIR Convention, 1975, and Appendix 2 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures.* The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall be based on the costs (including transportation expense) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229.

§ 115.12 Records maintained by certifying authority.

(a) Each Certifying Authority shall maintain—

(1) A copy of each individual certificate of approval issued, together with a copy of the plans and the application to which the approval refers, along with any information submitted by the manufacturer and/or owner or operator for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval, and containers approved at a stage after manufacture.

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers and road vehicles and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

§ 115.14 Meeting on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information on road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type; and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, a manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant either to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

Subpart C—Procedures for Approval of Containers by Design Type

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers to be manufactured in a type series from standard design and specifications so that each container has identical characteristics, may apply for approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975, or the Customs Convention on Containers, 1972.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacturer that:

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with:

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

(b) The Certifying Authority examining the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority and furnish it with "as-built" drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container submitted in accordance with the requirements contained in §115.29, and the one or more containers inspected in accordance with the requirements of § 115.31, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

The manufacturer shall affix, in a clearly visible place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(a) "Approved for transport under Customs seal."

(b) "USA/(number of the certificate of approval)/(last two digits of year of approval)." (e.g. "USA/1600/84" means "United States of America certificate of approval number 1600, issued in 1984)." A two digit alpha suffix may be added to the certificate of approval number to identify the Certifying Authority, e.g., USA/1600–AB/85, USA/1600–IB/85.

(c) Identification of the type of container and of the number of the container in the type series.

(d) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of this part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Three copies, each no longer than 3 feet by 4 feet, of the Customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of container;

(2) Name and business address of applicant;

(3) Identification marks and numbers;

(4) Tare weight;

(5) Nominal overall dimensions in centimeters;

(6) Type of construction and essential particulars of structure (nature of materials, coating system used, parts which are reinforced, whether bolts are riveted or welded, and similar matters); and

(7) Proposed location and date for inspection of the container.

§ 115.39 Eligibility.

The owner or operator may submit containers to be approved after the manufacturing stage to:

(a) The Certifying Authority of the country of manufacture if such country is a contracting party to the Convention.

(b) The Certifying Authority of the country where the owner or operator is resident or established, when such Certifying Authority has representatives located in the country of manufacture, which is a noncontracting party to the Convention.

(c) The Certifying Authority of the country where a container is used for the first time for transport of merchandise under Customs seal or where it is otherwise physically located.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS) and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229.

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval plates.

(a) The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32).

(b) Although an entry is not required in the space provided for type identifiers on an approval plate for containers approved after manufacture, identification number and letters indicating that a series of containers comply with the same specifications may be placed in such space. This may be used to assist in the identification of a series of containers in which a common defect may be discovered subsequent to certification. In such case the approval number on the plate shall be altered by an addition to the second or third element of such number. The specific method of altering the approval number may be established by each Certifying Authority, for containers approved by it, and communicated to the U.S. Customs Service.

(c) Two possible methods of accomplishing this are:

(1) Placing an "X" in front of the numeric portion of the middle element of the approval number, e.g., USA/X123–IB/85.

(2) Placing a suffix at the end of the approval number, e.g, USA/123–AB/85–01.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the owner, or carrier to a Certifying Authority and must include:

(a) Three copies, each no larger than 3 feet by 4 feet, or the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of vehicle;

(2) Name and business address of owner or operator;

(3) Name of the manufacturer;

(4) Chassis number;

(5) Engine number (if applicable);

(6) Registration number;

(7) Particulars of construction;

(8) Any photos or diagrams required by the Certifying Authority to facilitate approval; and

(9) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229.

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates:

(a) Upon expiration of the certificate of approval; or

(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features required in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart F—Procedures for Approval of Road Vehicles by Design Type

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer for certification of a road vehicle by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the road vehicle including the:

(i) Particulars of construction;

(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers.

(d) A statement signed by the manufacturer that:

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine;

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured according to the design type.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicles to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with "as-built" drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229.

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more vehicles of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying Authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

(a) The registration number given to the vehicle (item No. 1); or

(b) In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8). (See Annex 4 of the Convention for model of certificate of approval.)

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart E of this part. However, repairs in kind do not constitute a change of the essential features. **[TD 86-92.]**

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

Source: T.D. 88-12, 53 FR 9285, March 22, 1988, unless otherwise noted.

§ 122.0 Scope.

The regulations in this part relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the U.S. not specified herein. They do apply to the U.S. Virgin Islands as stated in Subpart N (§§ 122.141 through 122.144), and Cuba as stated in Subpart O (§§ 122.151 through 122.158).

Subpart A—General Definitions and Provisions

§ 122.1 General definitions.

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft.* An "aircraft" is any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include hovercraft.

(b) *Aircraft commander.* An "aircraft commander" is any person serving on an aircraft who is in charge or has command of its operation and navigation.

(c) *Agent.* An "agent" is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a non-scheduled airline, by power of attorney.

The authority to act shall be in writing and satisfactory to the district director.

(d) *Commercial aircraft.* A "commercial aircraft" is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.

(e) *International airport.* An "international airport" is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport.* A "landing rights airport" is any airport, other than an international airport, at which flights from a foreign area may be allowed to land.

(g) *Preclearance.* "Preclearance" is the examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be used only for air travelers and their baggage, not for merchandise.

(h) *Private aircraft.* A "private aircraft" is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes:

(2) Leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft.* A "public aircraft", is any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in Subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) Carrying neither passengers nor cargo.

(j) *Residue cargo.* "Residue cargo" is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in the U.S., for final delivery in a foreign area.

(k) *Scheduled airline.* A "scheduled airline" is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR Parts 201 and 213.

(l) *United States.* Except when used in another context, "U.S." means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

(m) *User fee airport.* A "user fee airport" is an airport so designated by Customs and listed in § 122.39. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. **[TD 88-16.]**

§ 122.2 Other Customs laws and regulations.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from or departing for any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels to the extent that such laws and regulations are administered or enforced by Customs, as provided in 49 U.S.C. App. 1509(c).

§ 122.3 Availability of forms.

The forms mentioned in this part may be purchased from the district director at a port of entry. A small quantity of each form is set aside by district directors for free distribution and official use.

§ 122.4 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written or printed in a foreign language.

§ 122.5 Reproduction of Customs forms.

(a) *Specifications.* Subject to approval by Customs, the forms mentioned in this part may be printed by private parties if the specified size, wording arrangement, style and size of type, and quality of paper are used.

(b) *Exceptions.* District directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The privately printed forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration.* Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on the reverse side of the official form may be omitted.

(2) *Air cargo manifest.* Customs Form 7509 may be changed to allow for additional information used by the airline.

Subpart B—International Airports

§ 122.11 Designation as international airport.

(a) *Procedure.* International airports, as defined in § 122.1(e), will be designated after due investigation to establish that sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen, rather than a general area or district. International airports will be publicly owned, unless circumstances require otherwise

(b) *Withdrawal of designation.* The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government.* Each international airport shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

§ 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge by Customs. However, charges may be assessed by the airport for commercial or private use of the airport.

(b) *Servicing of aircraft.* When an aircraft enters or clears through an international airport, it shall be promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges imposed by the airport operators shall not be greater than the schedule of charges in effect at the airport in question.

(c) *Federal Aviation Administration rules.* International airports shall follow and enforce any requirements for airport operations, including airport rules, that area set out by the Federal Aviation Administration in 14 CFR Part 91.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the Customs district served by the airport demand.

§ 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury.

Location	Name
Akron, Ohio	Akron Municipal Airport
Albany, N.Y.	Albany County Airport
Baudette, Minn	Baudette International Airport
Bellingham, Wash	Bellingham International Airport
Brownsville, Tex	Brownsville International Airport
Burlington, Vt	Burlington International Airport
Calexico, Calif	Calexico International Airport
Caribou, Maine	Caribou Municipal Airport
Chicago, Ill	Midway Airport
Cleveland, Ohio	Cleveland Hopkins International Airport
Cut Bank, Mont	Cut Bank Airport
Del Rio, Tex	Del Rio International Airport
Detroit, Mich	Detroit City Airport
Detroit, Mich	Detroit Metropolitan Wayne County Airport

Location	Name
Douglas, Ariz	Bisbee-Douglas International Airport
Duluth, Minn	Duluth International Airport
Duluth, Minn	Sky Harbor Airport
Eagle Pass, Tex	Eagle Pass Municipal Airport
El Paso, Tex	El Paso International Airport
Fort Lauderdale, Fla	Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash	Friday Harbor Seaplane Base
Grand Forks, N. Dak	Grand Forks International Airport
Great Falls, Mont	Great Falls International Airport
Havre, Mont	Havre City-County Airport
Houlton, Maine	Houlton International Airport
International Falls, Minn	Falls International Airport
Juneau, Alaska	Juneau Municipal Airport
Juneau, Alaska	Juneau Harbor Seaplane Base
Ketchikan, Alaska	Ketchikan Harbor Seaplane Base
Key West, Fla	Key West International Airport
Laredo, Tex	Laredo International Airport
Massena, N.Y	Richards Field
McAllen, Tex	Miller International Airport
Miami, Fla	Chalk Seaplane Base
Miami, Fla	Miami International Airport
Minot, N.Dak	Minot International Airport
Nogales, Ariz	Nogales International Airport
Ogdensburg, N.Y	Ogdensburg Harbor
Ogdensburg, N.Y	Ogdensburg International Airport
Oroville, Wash	Dorothy Scott Airport
Oroville, Wash	Dorothy Scott Seaplane Base
Pembina, N.Dak	Pembina Municipal Airport
Port Huron, Mich	St. Clair County International Airport
Port Townsend, Wash	Jefferson County International Airport
Ranier, Minn	Ranier International Seaplane Base
Rochester, N.Y	Rochester-Monroe County Airport
Rouses Point, N.Y.	Rouses Point Seaplane Base
San Diego, Calif	San Diego International Airport (Lindbergh Field)
Sandusky, Ohio	Griffing-Sandusky Airport
Sault Ste. Marie, Mich	Sault Ste. Marie City-County Airport
Seattle, Wash	King County International Airport
Seattle, Wash	Lake Union Air Service (Seaplanes)
Tampa, Fla	Tampa International Airport
Tucson, Ariz	Tucson International Airport
Watertown, N.Y	Watertown New York International Airport
West Palm Beach, Fla	Palm Beach International Airport
Williston, N. Dak	Sloulin Field International Airport
Wrangell, Alaska	Wrangell Seaplane Base
Yuma, Ariz	Yuma International Airport

§ 122.14 Access to Customs security areas.

(a) For the purposes of this section, the term "Customs security area" means the Federal inspection services area (as provided for by § 122.11(c)), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b)(1) With the exception of all Federal, and uniformed State and local law enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area must openly display or produce upon demand, an approved identification card, strip, or seal, to be issued by Customs. The approved identification card, strip, or seal shall be in the possession of the person in whose name it is issued at all times when the person is in the Customs security area. The identification strip or seal or any Customs issued card remains the property of Customs and any bearer must immediately surrender it upon demand by any authorized Customs officer.

(2) Employers operating in Customs airport security areas shall advise all their employees of the provisions of the Customs regulations relative to those areas, require that their employees familiarize themselves with those provisions and insure that all their employees comply therewith. The failure to comply with these regulations shall be considered as a default of the conditions of the employers bond, as hereafter specified, and shall make the employer liable for liquidated damages as specified in its bond. **[TD 88-46.]**

(c) An application for an approved identification card, strip or seal, as required by this section, shall be filed by the applicant with the district director on Customs Form 3078 and shall be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in §§ 113.62, 113.63, or 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities stated above, the application shall be supported by an Airport Customs Security Area Bond, as set forth in Appendix A of Part 113 of this chapter. The application requirement applies to all employees, regardless of the length of their employment. For employees hired on or after November 1, 1985, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check shall include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. For an employee hired before November 1, 1985, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. The fingerprints of the applicant may be required on fingerprint card form FD-258 at the time of the filing of the application. Proof of citizenship or authorized residency, and a photograph may also be required. In addition, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by

employers must be retained and made available upon request by the district director for a period of 1 year following cessation of employment by affected employees. [TD 88-46.]

(d) Law enforcement officers and other Federal, State, or local officials whose duties require access to the Customs security area may request from the district director the issuance of an approved identification card, strip, or seal. They need not make application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required. [TD 88-46.]

(e)(1) An approved identification card, strip, or seal shall not be issued to any person whose employment necessitates access to the Customs security area and whose access will, in the judgment of the district director, endanger the revenue or the security of the area. Grounds for denial of access shall include, but are not limited to:

(i) Any cause which would justify suspension or revocation of the identification card, strip, or seal under the provisions of paragraph (j) of this section; or

(ii) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct.

(2)(i) The district director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant. Specific reasons for denial shall not be furnished to the employer.

(ii) The denial will be final unless the applicant files with the district director a written notice of appeal. The applicant's written notice must be filed within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the statement of the district director. The district director shall render his decision on the appeal to the applicant within 30 days of receipt of the notice of appeal.

(iii) If the district director denies the application on appeal, the applicant may file a further written notice of appeal to the Commissioner within 10 days of receipt of the district director's decision on the appeal. The further notice of appeal shall be filed in duplicate, and shall set forth the response of the applicant to the district director's decision. The Commissioner or his designee shall review the appeal, and render a written decision. This final decision shall be transmitted to the district director and served by him on the applicant.

(f) An employee may obtain a new identification card, strip, or seal from the district director in the following circumstances, without completing a new application, except as determined by the district director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of his employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the identification card, strip, or seal.

(g) The identification card, strip, or seal shall be removed from the employee by the district director when, for security reasons, it is necessary to change the nature of the identification.

(h) The loss or theft of an identification card, strip, or seal shall be promptly reported in writing by the employee to the district director, and the card, strip, or seal may be replaced as provided in paragraph (f) of this section.

(i) If an approved identification card, strip, or seal is presented by a person other than the one to whom it was issued, the identification card, strip, or seal shall be removed by the district director and destroyed.

(j)(1) An approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the district director. In addition, the district director may revoke or suspend access to the Customs security area and demand that the identification strip or seal or Customs issued card be surrendered, for any of the following reasons:

(i) The approved identification card, strip, or seal was obtained through fraud or the misstatement of a material fact;

(ii) The employee is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(iii) The employee permits the approved identification card, strip or seal to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(iv) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area.

(v) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation; or

(vi) The bond required by paragraph (c) of this section determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(vii) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason. In this instance the employer shall notify the district director in writing, at the time of such change, and shall return the strip or seal to Customs. The notification shall include information regarding the disposition of the approved identification card of the employee who no longer requires access. A summary of such information shall be filed quarterly or at such shorter interval established by the district director. If the employee returns to duties in the Customs security area at the airport for the same employer within 1 year, a Customs Form 3078, as required by paragraph (d) of this section, need not be submitted. [TD 88-46.]

(2) The district director shall suspend or revoke access to the Customs security area by giving notice of the proposed action in writing to the employee with a copy of the notice to the employer. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the employee unless he files with the district director a written notice of appeal as provided in subparagraph (3) of this paragraph.

(3) The employee may file a written notice of appeal from the revocation or suspension within 10 calendar days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the employee to the statement of the

district director. The employee, in his notice of appeal, may request a hearing.

(4) If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner or his designee within 30 calendar days following the request. The employee shall be notified of the time and place of the hearing at least 5 calendar days before the hearing.

(5) The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented. Both parties will have the right of cross-examination. A stenographic record of the proceedings shall be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall promptly transmit all papers and the stenographic record of the hearing to the Commissioner or his designee, together with his recommendation for final action.

(6) Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the employee may submit to the Commissioner or his designee, additional written views and arguments on matters in the record.

(7) If neither the employee nor his attorney appear for a scheduled hearing, the hearing officer shall record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer shall promptly transmit all papers together with his recommendations to the Commissioner or his designee.

(8) After consideration of the recommendations of the hearing officer or the district director, the Commissioner or his designee shall render his decision, in writing, stating his reasons for the final action. The decision shall be transmitted to the district director and served by him on the employee.

(k) When an approved identification card, strip, or seal is required under paragraph (b) of this section, and the district director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary identification card, strip, or seal for his employee. The employer must satisfy the district director that a hardship to his business would result if the request is not granted. Surety on the bond required by paragraph (c) of this section may be waived in the discretion of the district director, but only for the period of the temporary identification card and authorized renewals of the temporary identification card. **[TD 88-46.]**

(1) The temporary identification card, strip, or seal shall be valid for a period of 60 days. The district director may renew the temporary identification card, strip, or seal for additional 30-day periods if he determines that the circumstances under which the temporary identification card, strip, or seal was originally issued continue to exist. The temporary identification card, strip, or seal shall be destroyed by the district director when the permanent approved identification card, strip, or seal is issued, or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification card, strip, or seal shall be valid for a period of 30 days. In the case of official visitors, the temporary identification card, strip, or seal shall be valid for the day of issuance only. Temporary employee and official visitor identification cards, strips, or seals are renewable for periods equal to their original period of validity.

(3) The temporary identification card, strip, or seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary identification card, strip, or seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

Subpart C—Private Aircraft

§ 122.21 Application.

This subpart applies to all private aircraft as defined in § 122.1(h). No other provisions of this part apply to private aircraft, except where stated in this subpart.

§ 122.22 Notice of arrival.

When arriving in the U.S. from a foreign area, all private aircraft not covered by § 122.23 shall give advance notice of arrival as required in § 122.31.

§ 122.23 Private aircraft arriving from areas south of the U.S.

(a) *Definitions.* (1) For the purpose of this section, "private aircraft" means all aircraft except:

(i) Public aircraft;

(ii) Those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation, authorizing interstate, overseas air transportation; and

(iii) Those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. App. 1372 and 14 CFR Part 298).

(2) The term "place" as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of the inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(b) *Advance report of penetration of U.S. airspace.* All private aircraft arriving in the Continental U.S. via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 122.1(1)) from Puerto Rico (which if from Puerto Rico, are conducting flight under visual flight rules (VFR)), shall furnish a notice of intended arrival to Customs at the nearest designated airport to point of crossing listed in § 122.24(b), for the first landing in the U.S. The notice must be furnished at least 1 hour before crossing the U.S. coastline or border. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. The requirement to furnish a notice of intended arrival shall not

apply to private aircraft departing from Puerto Rico and conducting flight under instrument flight rules (IFR) until crossing the U.S. coastline or proceeding north of 30 degrees north latitude.

(c) *Contents of notice.* The advance notice of arrival shall include the following:

(1) Aircraft registration number;
(2) Name of aircraft commander;
(3) Number of U.S. citizen passengers;
(4) Number of alien passengers;
(5) Place of last departure;
(6) Estimated time and location of crossing U.S. border/coastline;
(7) Estimated time of arrival;
(8) Name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

§ 122.24 Landing requirements.

(a) *In general.* Private aircraft arriving in the U.S. from a foreign area shall follow the landing requirements set out in §§ 122.23 and 122.36.

(b) *Special requirements.* Private aircraft required to furnish a notice of intended arrival in compliance with § 122.23 shall land for Customs processing at the nearest designated airport to the border or coastline crossing point as listed in this paragraph unless exempted from this requirement in accordance with § 122.25. In addition to the requirements of this section, private aircraft commanders must comply with all other landing and notice of arrival requirements. This requirement shall not apply to private aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

Location	Name
Beaumont, Tex	Jefferson County Airport.
Brownsville, Tex	Brownsville International Airport.
Calexico, Calif	Calexico International Airport.
Corpus Christi, Tex	Corpus Christi International Airport.
Del Rio, Tex	Del Rio International Airport.
Douglas, Ariz	Bisbee-Douglas International Airport.
Eagle Pass, Tex	Eagle Pass Municipal Airport.
El Paso, Tex	El Paso International Airport.
Fort Lauderdale, Fla	Fort Lauderdale Executive Airport.
Fort Lauderdale, Fla	Fort Lauderdale-Hollywood International Airport.
Fort Pierce, Fla	St. Lucie County Airport.
Houston, Tex	William P. Hobby Airport.
Key West, Fla	Key West International Airport.
Laredo, Tex	Laredo International Airport.
McAllen, Tex	Miller International Airport.
Miami, Fla	Miami International Airport.
Miami, Fla	Opa-Locka Airport.
Miami, Fla	Tamiami.
New Orleans, La	New Orleans International Airport (Moissant Field).
New Orleans, La	New Orleans Lakefront Airport.
Nogales, Ariz	Nogales International Airport.
Presidio, Tex	Presidio-Lely International Airport.
San Diego, Calif	Brown Field.
Tampa, Fla	Tampa International Airport.
Tucson, Ariz	Tucson International Airport.
West Palm Beach, Fla	Palm Beach International Airport.
Yuma, Ariz	Yuma International Airport.

[TD 89-2.]

§ 122.25 Exemption from special landing requirements.

(a) *Request.* Only companies principally headquartered in the U.S. or individuals principally residing in the U.S. that have operational control over U.S. registered aircraft required to give advance notice of arrival under § 122.23, may request an exemption from the special landing requirements in § 122.24. Exemptions are within the discretion of the district director and may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the district director at the airport at which the majority of Customs overflight processing is desired by the applicant. The request shall be submitted:

(1) At least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of one year; or

(2) At least 15 days before the anticipated arrival if the request is for a single flight.

(c) *Content of request.* A request for exemption from the special landing requirements shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer, and shall include the following information:

(1) Aircraft U.S. registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number, and date of birth of the owner if an individual, or the address of the headquarters of the business (include

state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number, Federal Aviation Administration certificate number, and place and date of birth;

(6) A statement from the individual signing the application, as specified in paragraph (c)(4) of this section, that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers, and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemption.

Note.—Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in § 122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application.

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports.

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If a private aircraft is granted an exemption from the landing requirement as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in § 122.24. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§ 122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must:

(i) Notify Customs of a change of Federal Aviation Administration registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification, or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencment of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the district director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(vi) The notifications specified in this paragraph must be given to Customs within 5-working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h), are not required to formally enter or to obtain formal clearance upon departure. However, entry and clearance requirements do apply to air charter and air taxi operators.

§ 122.27 Documents required.

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in Part 148 of this chapter. An oral declaration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059–B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059–B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR Part 30) and the Export Administration (15 CFR Parts 368 through 399) regulations and any other applicable export laws shall be followed. A foreign landing certificate or certified copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than $500.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

§ 122.28 Private aircraft taken abroad by U.S. residents.

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in § 148.32 of this chapter. Repairs made abroad, and accessories purchased abroad shall be included in the baggage declaration as required by § 148.32(c), and may be subject to entry and payment of duty as provided in § 148.32.

§ 122.29 Overtime services.

(a) *Application.* Private aircraft arriving in the U.S. and requiring Customs services to be performed outside the regular hours of duty are subject to overtime charges. The overtime charges to be assessed against the operator of a private aircraft in connection with each arrival are limited to a maximum of $25.

(b) *Procedures.* An application must be made on Customs Form 3171 to receive overtime services. The application shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, and may be effective up to one year. See § 24.16(c) of this chapter.

§ 122.30 Other Customs laws and regulations.

Sections 122.2 and 122.161 apply to private aircraft.

Subpart D—Landing Requirements

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the U.S. from a foreign area shall give advance notice of arrival. When a private aircraft, as defined in § 122.23(a) of this part, enters the U.S. from a foreign area in the Western hemisphere south of the U.S., advance notice shall be given as provided in § 122.23. Aircraft arriving from Cuba shall follow the procedures set forth in Subpart O of this part.

(b) *Exceptions for scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule shall have been filed with the district director for the district in which the first landing is made. Scheduled airlines shall also submit a copy of their schedules to the regional commissioner of the region in which the scheduled aircraft will land. This notice shall be given 30 days before the effective date of the schedule.

(c) *Giving notice of arrival*—(1) *Procedure.* The commander of an aircraft covered by this section shall give the advance notice of arrival. Notice shall be given to the district director at or nearest the place of first landing, either:

(i) Directly by radio, telephone, or other method; or

(ii) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival shall include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by Customs;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival shall be furnished far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft.

(f) *Notice of other Federal agencies.* When advance notice is received, the district director shall inform any other concerned Federal agency.

§ 122.32 Aircraft required to land.

Any aircraft coming into the U.S., including Puerto Rico, from an area outside the U.S., is required to land, unless exempted by the Federal Aviation Administration.

§ 122.33 Place of first landing.

The first landing of an aircraft entering the U.S. from a foreign area shall be at an international airport (see § 122.13, International airports), unless permission to land at a designated user fee airport listed in § 122.39 is granted. Permission to land at another place may also be granted under § 122.34 (Landing rights airport). Permission to land is not required for an emergency or forced landing (see § 122.35). **[TD 88-16.]**

§ 122.34 Landing rights airport.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the regional commissioner, or his representative, of the region in which first landing is made.

(2) *Other aircraft.* All other aircraft may be allowed to land at a landing rights airport by the district director at the port of entry or station nearest the first place of landing.

(3) *Additional flights, charters or changes in schedule*—(i) *Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the regional commissioner.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the district director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(4) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (see § 122.35).

(b) *Notice to Federal agencies.* If an aircraft is given permission to land at a landing rights airport, the Customs officer who granted the landing rights shall notify the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other interested Federal agency at once.

(c) *Payment of expenses.* The owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given. When permission to land is given to scheduled aircraft of a scheduled airline, no inspection charge is made except for the overtime expenses of Customs officers. (see § 24.16 of this chapter).

§ 122.35 Emergency or forced landing.

(a) *Application.* This section applies to emergency or forced landings made by aircraft when necessary for safety or the preservation of life or health, when such aircraft are:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice.* When an emergency or forced landing is made, notice shall be given:

(1) To the Customs officer at the intended place of first landing, nearest international airport, or nearest port of entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make a full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers.* The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs.

(d) *Merchandise and baggage.* The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers arrive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail.* Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

§ 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and Customs officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure.

§ 122.37 Precleared aircraft.

(a) *Application.* This section applies when aircraft carrying crew, passengers and baggage, or merchandise which has been precleared pursuant to § 148.22 of this chapter at a location listed in § 101.5 of this chapter and makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice.* The aircraft commander or agent shall give written notice to the Customs office at:

(1) The intended place of unlading; and

(2) The place of preclearance.

(c) *Time of notice.* Notice shall be given within 7 days of the unscheduled or unintended landing unless other arrangements have been made in advance between the carrier and the district director.

§ 122.38 Permit and special license to unlade and lade.

(a) *Applicability.* Before any passengers, baggage, or merchandise may be unladen or laden aboard on arrival or departure of an aircraft subject to these regulations, a permit and/or special license to unlade or lade shall be obtained from Customs.

(1) *Permit to unlade or lade.* A permit is required to obtain Customs supervision of unlading and lading during official Customs duty hours.

(2) *Special license to unlade or lade.* A special license is required to obtain Customs supervision of unlading and lading at any time not within official Customs duty hours (generally, at night, Sundays or holidays).

(b) *Authorization required.* A permit or special license shall be required for each arrival and departure unless a term permit or special license has been granted. No permit or special license shall be issued unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(c) *Term permit or special license.* A term permit or special license may be issued covering all arrivals and departures during a period of up to one year, providing local arrangements have been made to notify Customs before services are needed. The notice shall specify the kinds of services requested, and the exact times they will be needed. No term permit or special license shall be issued, and any term permit or special license already issued shall be revoked, unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on Customs Form 3171, and shall be submitted to the district director for the district in which the unlading and lading will take place. The application shall be accompanied by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the district director may waive the requirement under paragraph (d) of this section that either a bond or a cash deposit be made, if he is convinced the revenue is protected and that all Customs requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a bond on Customs Form 301 containing the appropriate bond conditions set forth in Subpart G of Part 113 of this chapter is on file. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the district director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the district director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10

on Customs Form 3171 shall be changed by adding the following words after the period of time indicated: "And automatic annual renewal thereof for so long as the bond is renewed and remains in effect."

§ 122.39 User fee airports.

(a) The procedures for landing at a user fee airport are the same procedures as those set forth in § 122.34 for landing rights airports.

(b) The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. Information concerning service at any of these airports can be obtained by calling the airport or its authority directly.

Location	Name
Casper, Wyoming	Natrona County International Airport.
Columbus, Ohio	Rickenbacker Airport.
Dona Ana County, New Mexico	Santa Teresa Airport.
Fargo, North Dakota	Hector International Airport.
Fort Myers, Florida	Southwest Florida Regional Airport.
Lebanon, New Hampshire	Lebanon Municipal Airport.
Lehigh Valley, Pennsylvania	Allentown-Bethlehem-Easton Airport.
Midland, Texas	Midland International Airport.
Wilmington, Ohio	Airborne Air Park.

[TD 88-16.]

Subpart E—Aircraft Entry and Entry Documents

§ 122.41 Aircraft required to enter.

All aircraft coming into the U.S. from a foreign area shall make entry under Subpart E except:

(a) Public and private aircraft; and

(b) Aircraft traveling from airport to airport in the U.S. under Subpart I, relating to residue cargo procedures.

§ 122.42 Aircraft entry.

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry*—(1) *First landing at international airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at international airport pursuant to §§ 122.34 or 122.35, the aircraft commander or agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

(d) *Exception to entry requirement.* Except for flights to Cuba (provided for in Subpart O of this part), an aircraft of a scheduled airline which stops only for refueling at the first place of arrival in the U.S. shall not be required to enter provided:

(1) That such aircraft departs within 24 hours after arrival;

(2) No cargo, crew, or passengers are off-loaded; and

(3) Landing rights at that airport as either a regular or alternate landing place shall have been previously secured.

§ 122.43 General declaration.

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under § 122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see § 122.48) may be filed in place of the general declaration, regardless of whether cargo is on board. The air cargo manifest shall state the following:

I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.

Signature _____

(Aircraft Commander or Agent)

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under § 122.5. The form shall contain all required information, unless the information is given in some other manner under Subpart E of this part.

§ 122.44 Crew baggage declaration.

If an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in Subpart G, Part 148 of this chapter.

§ 122.45 Crew list.

(a) *When required.* A crew list shall be filed by all aircraft required to enter under § 122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

(1) On the general declaration in the column headed "Total Number of Crew"; or

(2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

§ 122.46 Crew purchase list.

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under Subpart G of Part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* If a crewmember enters articles for which a written crew declaration is not required (see Subpart G, Part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

(1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and

(2) The statement "Crew purchases as per attached crew declaration" appears on the general declaration or crew list.

§ 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement "Stores List Attached" must appear on the cargo manifest.

(c) *Contents*—(1) *Required listing.* The stores list shall include all of the following:

(i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;

(ii) Bonded merchandise arriving as stores;

(iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement "Domestic supplies and equipment and fuel for immediate flight only, except as noted" appears on the cargo manifest or on the separate stores list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

§ 122.48 Air cargo manifest.

(a) *When required.* An air cargo manifest for all cargo on board shall be filed together with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a foreign country on the same through flight. Any cargo manifest already on board may be inspected. All articles on board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The cargo manifest shall be on Customs Form 7509. The form shall contain all required information, except that a more complete description of the cargo shipped under air waybills may be provided by attaching a copy of each master air waybill and, if a consolidated shipment, copies of the house air waybills to the cargo manifest. The statement "Cargo as per air waybills attached" shall appear on the cargo manifest when this is done. Each air waybill number shall also be listed on the cargo manifest.

(d) *Unaccompanied baggage.* Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Chapter 98, HTSUS (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited may be subject to seizure. Such unaccompanied checked baggage shall be added to the cargo list in columns under the following headings:

Check No.	Description	Where from	Destination	Name of examining officer	Disposition

The two columns, headed "Name of examining officer" and "Disposition," are provided on the cargo manifest for the use of Customs officers. Unaccompained unchecked baggage arriving as air express or freight shall be manifested as other air express or freight. **[TD 89-1.]**

(e) *Accompanied baggage in transit.* This section applies when accompanied baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage while in transit through the U.S., the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

§ 122.49 Correction of air cargo manifest or air waybill.

(a) *Shortages*—(1) *Reporting.* Shortages (merchandise listed on the manifest or air waybill but not found) shall be reported to the district director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked "Shortage Declaration," and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in Part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* The aircraft commander or agent shall supply proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting.* Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the district director by the aircraft commander or agent. The report shall be made.

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked "Post Entry" and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.

Signature _____

(Aircraft Commander or Agent)

(d) *Notice by district director.* The district director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required.* A correction in the manifest or air waybill is not required if:

(1) The district director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable.* If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompained baggage for which a manifest or air waybill must be filed, sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply.

Subpart F—International Traffic Permit

§ 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

§ 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in § 122.1(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* If an aircraft covered by this section is entered as an imported article, and any applicable duty for the aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. In this instance, the aircraft commander must file a declaration that states the:

(1) Port where entry was made;

(2) Date duty, if any, was paid; and

(3) Number of the entry.

(c) *Aircraft not entered as imported article*—(1) *Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in § 122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

(i) Is used only for commercial purposes between the U.S. and foreign areas; and

(ii) Will leave the U.S. for a foreign destination in commercial use or carrying neither passengers nor cargo.

(2) *Treatment as an imported article.* Any aircraft covered by this section which was not entered as an imported article shall make entry if it:

(i) Is withdrawn from commercial use between the U.S. and foreign areas; or

(ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(3) *Aircraft damage and duty payment*—(i) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(ii) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commerical use and is not subject to entry or to duty as imported merchandise.

(iii) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft or any salvageable part of it is not exported, then:

(A) Entry is required to be made for the damaged aircraft or any salvageable part of it; and

(B) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

§ 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft for purposes of this subpart.

§ 122.54 Aircraft of foreign registry.

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for an international traffic permit when the aircraft;

(1) Is not an imported article; and

(2) Is ferried (proceeds carrying neither passengers nor cargo) from the airport of first arrival to one or more airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for discharge in the U.S., see Subpart I of this part).

(b) *International traffic permit.* The international traffic permit shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following

information and must be approved by the appropriate Customs officer:

(1) Type of aircraft;
(2) Nationality and registration number of aircraft;
(3) Name and country of aircraft manufacturer;
(4) Name of aircraft commander;
(5) Country from which aircraft arrived;
(6) Name and location of airport where international traffic permit is issued;
(7) Date international traffic permit is issued;
(8) Name and location of airport to which aircraft is proceeding;
(9) Purpose of stay in the U.S.;
(10) Signature of Customs officer giving permit.

(c) *Permit on board.* The international traffic permit shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note the following information on the permit:

(1) Name and location of the airport;
(2) Date and arrival time;
(3) Purpose of the visit;
(4) Name and location of the next airport to be visited; and
(5) Date and time of departure.

(e) *Final airport.* The international traffic permit shall be given to the Customs officer in charge at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that the aircraft was properly inspected by Customs in the U.S.

(f) *Port of issue.* The international traffic permit shall be returned after final clearance to the district director at the port where the permit was issued, to be kept on file.

(g) *Enforcement.* Once the permit to proceed has been issued for an aircraft, the district director at the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the district director shall report the matter to the Customs agent in charge of the area for investigation.

Subpart G—Clearance of Aircraft and Permission To Depart

§ 122.61 Aircraft required to clear.

(a) All aircraft, except public and private aircraft, leaving the U.S. for a foreign area are required to clear if:

(1) Carrying passengers and/or merchandise for hire; or
(2) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

(b) Any aircraft used by members of air travel clubs are required to clear, and foreign aircraft traveling under a permit to proceed shall also clear.

§ 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR 30.1), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Office of Export Administration.* Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Office of Export Administration (Department of Commerce) is required for the aircraft under the Export Control Regulations (15 CFR Part 370). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State.* Aircraft not covered by Export Control Regulations are subject to the Department of State export licensing authority as set out in 22 CFR Parts 121 and 123. Such aircraft may depart from the U.S. only with the proper Department of State license.

§ 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft of scheduled airlines covered by this subpart.

(a) *Clearance at other than airport of final departure.* Aircraft may clear at each airport where merchandise and/or passengers are taken on board for transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (regardless of whether it is an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport.* Clearance or permission to depart may be requested at the Customs port of entry (regardless of whether it is an international airport) nearest the last departure airport, unless some other place is designated by the district director at that port.

§ 122.64 Other aircraft.

Clearance or permission to depart shall be requested by the aircraft commander or agent for aircraft covered by this subpart other than those of scheduled airlines. The request must be made to the district director at the Customs port of entry (regardless of whether it is an international airport) nearest the final departure airport, unless some other place is designated by the district director.

§ 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart it must depart within 72 hours. The aircraft commander or agent shall report promptly to the district director if departure is delayed beyond or cancelled within 72 hours after the aircraft received clearance or permission to depart.

Subpart H—Documents Required for Clearance and Permission to Depart

§ 122.71 Aircraft departing with no commercial export cargo.

(a) *Application.* This section applies to aircraft departing for foreign territory with no export cargo, but not to those aircraft which are themselves being exported.

(1) Such aircraft may clear by telephone in advance with the district director nearest the departure place if departing empty or carrying only:

(i) Passengers for hire; or

(ii) Non-commercial cargo for which Shipper's Export Declarations are not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, shall be submitted to Customs:

I declare to the best of my knowledge and belief that there is no cargo on board this aircraft.
Signature _____
(Aircraft Commander or Agent)

(b) *Timeliness.* The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo.

(c) *Documentation.* If clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

§ 122.72 Aircraft departing with commercial export cargo.

If an aircraft with export cargo leaves the U.S. for any foreign area, a general declaration, if required, an air cargo manifest and any required Shipper's Export Declarations, shall be filed in accordance with this subpart for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See § 122.79 for special requirements regarding shipments to U.S. possessions.

§ 122.73 General declaration and air cargo manifest.

(a) *General declaration*—(1) *Form.* The general declaration shall be on Customs Form 7507 and shall show all information required.

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the general declaration with the district director at the departure airport.

(3) *Exception.* A general declaration shall not be required if the air cargo manifest, Customs Form 7509, contains the statement shown in paragraph (b) of this section.

(b) *Air cargo manifest.*

(1) *Form.* The air cargo manifest shall be on Customs Form 7509, and shall show all information required. If a general declaration is not presented, the following statement, signed by the aircraft commander or agent, shall appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signature _____

(Aircraft Commander or Agent)

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the air cargo manifest with the district director or the departure airport. Three copies of the air cargo manifest shall be filed if the aircraft is covered by § 122.77(b). The air cargo manifest must be filed in:

(i) Complete form, with all required Shipper's Export Declarations (see § 122.75); or

(ii) Incomplete form (pro forma) under § 122.74.

§ 122.74 Incomplete (pro forma) manifest.

(a) *Application.* Clearance or permission to depart may be given to an aircraft by the district director before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, except for aircraft bound for locations referred to in paragraph (b) of this section.

(b) *Exceptions.* An incomplete manifest will not be accepted:

(1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or

(2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign country listed in § 4.75 of this chapter.

In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with the district director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required Shipper's Export Declarations and a complete air cargo manifest shall be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments between the U.S. and Puerto Rico, the complete manifest (when required) and all Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure.

(3) *Shipments to U.S. possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure. See § 122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the 4-day bond period; or

(2) All required documents will be filed within the 7-day bond period.

Once all documents have been filed, a statement as required by § 122.75(b) shall be made.

§ 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest shall list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. If an item does not require a Shipper's Export Declaration, it shall be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement "Cargo as per Air Waybill Attached" must appear on the air cargo manifest if this is done.

(2) *Direct departure.* This subsection applies only to direct departures of shipments requiring a Shipper's Export Declaration. A copy of each declaration may be attached to the air cargo manifest, and the number of each declaration shall be listed on the air cargo manifest in the column for air waybill numbers. The statement "Cargo as per export Declarations Attached" must appear on the manifest if this is done.

(b) *Statement required.* (1) When all required documents are ready for filing, the following statement must appear on the air cargo manifest, or on the general declaration form if an air cargo manifest is not required:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

(2) If an incomplete set of documents has been filed and is later completed, the following statement shall accompany the Shipper's Export Declarations and any required air cargo manifests:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. _____, Flight No. _____ cleared direct for _____, on _____ except cargo listed on any cargo manifest required to be filed for such flight.
Airline _____
Authorized Agent _____

§ 122.76 Shipper's Export Declarations and inspection certificates.

At the time of clearance, the aircraft commander or agent shall file with the district director at the departure airport any Shipper's Export Declarations required by the Bureau of Census (see § 122.62(a)). The aircraft commander or authorized agent also shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR Part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine or goats.

§ 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the district director to show that clearance is granted.

(b) *Scheduled aircraft.* If a scheduled aircraft clears at an airport which is not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed at the port by the district director at the port where clearance is obtained, and the second copy shall be attached to the first for use at subsequent U.S. ports.

§ 122.78 Entry or withdrawal for exportation or for transportation and exportation.

If a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show the following information for each entry or withdrawal:

(a) Number;
(b) Date; and
(c) Class of entry or withdrawal, as follows:
(1) Transportation and exportation;
(2) Withdrawal for transportation and exportation;
(3) Immediate exportation;
(4) Withdrawal for exportation; or
(5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where the merchandise is laden for exportation, shall also appear on the air cargo manifest.

§ 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico.* An air cargo manifest shall be filed for aircraft transporting cargo between the U.S. and U.S. possessions. Shipper's Export Declarations are not required for shipments from the U.S. or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the U.S., Puerto Rico, or another U.S. possession.

(b) *Puerto Rico.* This subsection applies when an aircraft carries merchandise on a direct flight between the U.S. and Puerto Rico. If the requirements contained in Subpart I, relating to residue cargo procedures, have been satisfied, an air cargo manifest is required only for:

(1) Merchandise transported as cargo for which a Shipper's Export Declaration is not required; or

(2) Cargo for which a Shipper's Export Declaration cannot be filed on time. (See 15 CFR 30.21).

Any required air cargo manifest or Shipper's Export Declarations shall be filed with the district director at the point of departure.

§ 122.80 Verification of statement.

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

§ 122.81 Application.

(a) *Aircraft arriving with cargo.* Aircraft arriving in the U.S. from a foreign area with cargo shown on the manifest to be traveling to other airports in the U.S. or to foreign areas may proceed under the provisions of this subpart.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, has been filed and covers the aircraft.

§ 122.82 Bond requirements.

A bond on Customs Form 301, containing the bond provisions set forth in Subpart G of Part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the district director at the entry airport.

§ 122.83 Forms required.

(a) *Traveling general declaration and manifest.* When applying for examination and release from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest*—(1) *Crew purchase and stores list.* The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list.* A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the aircraft with his or her purchase at the first entry port.

The crew member's declaration must be attached at the port where the articles listed on the declaration receive clearance.

(c) *Abstract general declaration and manifest.* The abstract general declaration and manifest shall consist of one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet examined and released by Customs or any other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed.* A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

Permit to Proceed From one Airport to Another

Airport of Departure _____
Date _____
Permission is hereby given aircraft _____ to proceed to _____
(Next Domestic Airport)
The aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.
Number of crew members not cleared by Customs _____.
Number of passengers not cleared by Customs _____.
Number of pages of the traveling manifest _____.

_____
(Customs Officer and Title)

Declaration on Entry of Aircraft at Following Airport

Airport of Arrival _____
Date _____
I, _____, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of _____, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

_____
(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

(1) The abstract general declaration;

(2) The traveling general declaration when an abstract general declaration is not required; or

(3) A separate sheet of paper.

(e) *Permit to proceed for nonscheduled aircraft.* For each permit to proceed issued to a nonscheduled aircraft carrying residue cargo the transit air cargo manifest procedures shall be followed and a numbered Customs Form 7512–C shall be filled out and filed. The number on the form shall be placed in the upper right hand corner of the permit to proceed. The original copy of Customs Form 7512–C shall be forwarded as required by the issuing port and the duplicate must be attached to the permit and given to the aircraft commander. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed and Customs Form 7512–C (duplicate) to Customs.

(f) *Use of form.* When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the Customs officer in charge at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

§ 122.84 Intermediate airport.

(a) *Application.* The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

(b) *Entry.* When an aircraft arrives at the next airport, the aircraft commander or agent shall make entry by filing the:

(1) Abstract general declaration and manifest;

(2) Traveling general declaration and manifest; and

(3) Permit to proceed.

The *Declaration on Entry of Aircraft at Following Airport,* found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations.* The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the Customs officer in charge and are kept at the airport.

(d) *Departure.* When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not yet cleared by Customs or another interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under paragraph (c) of this section, shall be returned to the aircraft commander or agent for filing at the next entry airport.

§ 122.85 Final airport.

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

§ 122.86 Substitution of aircraft.

(a) *Application.* The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors which prevent an aircraft on arrival of the flight at the first port from continuing inbound to interior ports scheduled for that flight.

(b) *Clearance and entry.* Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification.* An identification of all substitute aircraft shall be clearly made on all clearance and entry documents.

(d) *Transporting cargo*—(1) *Forwarding.* The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the

inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions.* All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo.

§ 122.87 Other requirements.

Section 4.85 of this chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in this subpart.

§ 122.88 Aircraft carrying domestic (stopover) passengers.

Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are continuing on the flight to their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. The carriers requirements are as follows:

(a) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(b) A $2.00 charge must be paid for each revenue producing domestic (stopover) passenger reinspected in the U.S. (see § 24.12 of this chapter).

(c) Arrangements must be made for the checked baggage of all passengers requiring inspection on the previously described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(d) All stopover passengers shall be notified in writing, prior to boarding, that they will be subject to full reinspection by Customs. This written notification shall contain the following language: "Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry."

(e) Domestic (stopover) passengers shall be provided a Customs declaration identified by the words "Domestic Flight". The domestic (stopover) passenger is only required to complete items 1–4 on that declaration.

(f) The carrier shall present to Customs, as otherwise required by law, the permit to proceed and/or the general declaration, clearly stating the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final) where an inspection of passengers is to take place.

Subpart J—Transportation in Bond and Merchandise in Transit

§ 122.91 Application.

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

(a) For immediate transportation to another airport without appraisement; or

(b) For transportation through the U.S. and later exportation by aircraft.

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512.* Customs Form 7512 or other Customs approved documents shall be used for both entry and manifest. Three copies of the form or other document are required to be filed with Customs at the port of origin for merchandise for immediate transportation without appraisement. Four copies of the form or other document are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a) of this chapter). Each copy shall be signed by the carrier or its authorized agent.

(2) *Customs Form 7512-C.* The "Origin" copy of Customs Form 7512-C shall be filed with Customs Form 7512, and its number shall be placed on all copies of Customs Form 7512.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document, and the duplicate copy of Customs Form 7512-C shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs Form 7512 and one copy of Customs Form 7512-C or other Customs approved document shall be delivered to the carrier.

(3) *After delivery.* After delivery, the forms or other document shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond, and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(d) *Split shipment—(1) Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512 or other Customs approved document) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* If any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment shall state that the rest of the shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be used as notice of each arrival at the destination airport.

(e) *Transhipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. If merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in § 18.4(e) of this chapter, to each bonded package.

§ 122.93 Procedure at destination or exportation airport.

(a) *Delivery to district director.* When a bonded shipment arrives at the destination or exportation airport, the aircraft commander or agent shall deliver one copy of the entry and manifest with Customs Form 7512–C attached (Customs Form 7512 or other Customs approved document) covering the shipment to the district director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the district director.

(b) *Delivery to consignee.* When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in § 141.11(a)(4) of this chapter.

§ 122.94 Certificate of lading for exportation.

(a) *Required filing.* This section applies to merchandise entered for transportation and exportation by aircraft. A certificate of lading for exportation, Customs Form 7512 with Customs Form 7512–C attached, or other Customs approved document (see § 122.93 of this subpart) shall be filed when the merchandise reaches the final departure airport. The form shall be filled out and signed at the place where aircraft clearance for the merchandise is given.

(b) *Clearance not at place of final departure.* If an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or its authorized agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

§ 122.95 Other provisions.

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of merchandise under this subpart unless stated otherwise.

Subpart K—Accompanied Baggage in Transit

§ 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in-transit procedures.

When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in § 122.48.

§ 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the district director.

(b) In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

§ 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through, or from, the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See Subparts I and J of this part, and Parts 18 and 123 of this chapter.)

§ 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* "Transit air cargo" is cargo, including manifested baggage, transported under the requirements of this subpart.

(b) *Port of arrival.* The "port of arrival" is the port in the U.S. where imported cargo must be documented for further transportation under this subpart.

(c) *Transfer or transferred.* "Transfer or transferred" means the change of documentation of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by air or surface movement to the port of destination.

(d) *Transit air cargo manifest.* "Transit air cargo manifest" is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

§ 122.113 Form for transit air cargo manifest procedures.

A manifest on Customs Form 7509 is required for transit air cargo, as provided in § 122.48(c) of this part. The words "Transportation Entry and Transit Air Cargo Manifest" shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

§ 122.114 Contents.

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Shipments shown on manifest*—(1) *Country of exportation.* Each transit air cargo manifest sheet may list:

(i) Only air cargo shipments from one exporting country, with the name of the country shown in the heading; or

(ii) Air cargo shipments from several exporting countries, with the name of the exporting country shown in the "Nature of Goods" column.

(2) *Shipment to same port.* Each transit air manifest sheet may list only those shipments manifested by way of the port of arrival for:

(i) The same Customs port of destination;

(ii) The same Customs port for later exportation; or

(iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

(1) The foreign port of lading;

(2) The date the aircraft arrived at the port of arrival;

(3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Corrections.* If corrections in the route shown on the original manifest for the cargo are required at the port of arrival to make a manifest sheet workable as a transit air cargo manifest, the district director at the port of arrival may allow the corrections.

§ 122.115 Labeling of cargo.

A warning label, as required by § 18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival before the cargo leaves the port of arrival.

§ 122.116 Identification of manifest sheets.

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander or its authorized agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

§ 122.117 Requirements for transit air cargo transport.

(a) *Transportation*—(1) *Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in paragraph (b) of this section. The receipt may be given only to an airline which:

(i) Is a common carrier for the transportation of bonded merchandise; and

(ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond on Customs Form 301, containing the bond conditions set forth in Subpart G of Part 113 of this chapter, as provided in § 18.25 of this chapter.

(b) *Receipt*—(1) *Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the lay order period, or an authorized extension period (see § 4.37 of this chapter).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo manifest, clearly signed and dated if required, in the following form:

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

_____

Name of carrier (or exporter)

_____

Attorney or agent of carrier (or exporter)

_____

Date

(c) *Responsibility for transit air cargo*—(1) *Direct exportation.* The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(2) *Other than direct exportation.* When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(3) *Carting.* When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under Part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines.* An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

(i) Give a receipt for the air cargo;

(ii) File an appropriate bond; and

(iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments.* A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

(1) By § 122.92(d) under a single combined entry and manifest;

(2) By § 122.118(d); or

(3) By § 122.119(e), permitting the use of a surface carrier for transport.

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See Subpart J).

§ 122.118 Exportation from port of arrival.

(a) *Application.* Transit air cargo may be transferred for exportation from any port of arrival under this section. The district director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time.* Transit air cargo shall be exported from the port of arrival within 10 days from the date the exporting airline receives the cargo. After the 10-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy.* The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This

filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt on the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy.* The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy.* The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting airline's receipt for the cargo, aircraft number, flight number, and the date.

(d) *Direct export on different aircraft.* Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. If this occurs, two additional copies of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* If shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by § 18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., overages) which has been post entered under § 122.49(b) may be exported from the port of origin under this subpart. If this occurs, four copies of the air cargo manifest, Customs Form 7509, marked "Post Entry", shall be provided. All requirements of § 122.44(b) shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in § 122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required license must be placed under constructive Customs custody in a special area of the airline's terminal until the license is obtained.

§ 122.119 Transportation to another U.S. port.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The district director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 15 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Four copies of the transit air cargo manifest, including a carrier manifest copy, and two copies of Customs Form 7512–C (original and duplicate) shall be filed by the airline giving a receipt for moving the cargo shipments to their destination.

(1) *Permit copy.* This copy is used and kept by Customs at the port of arrival.

(2) *Customs Form 7512–C (duplicate).* This copy accompanies the transit air cargo to the port of destination.

(d) *Failure to deliver on time—*(1) *Procedure.* If transit air cargo does not arrive at the destination port on time, the district director at the port of arrival shall take action as provided in §§ *18.6 and 18.8 of this chapter. The amount* of duty and tax shall be decided at the port of arrival on the basis of information:

(i) On the permit copy kept at the port of arrival; and

(ii) Obtained from the carriers as necessary.

The district director at the port of arrival shall notify the airline that presented a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that presented a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the district director at the port of arrival. The answer shall provide any information or documents related to the value and description of the cargo involved that the receipting airline and the importing airline can produce

(e) *Surface movement to port of destination.* If an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

(1) The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement;

(2) The description of the cargo on the transit air cargo manifest must be complete;

(3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface carrier; and

(4) The requirements of § 122.114(b) must be followed.

§ 122.120 Transportation to another port for exportation.

(a) *Application.* Air cargo may be transferred as transit air cargo at the port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision—*(1) *From port of arrival to exportation port.* The district director at the port of arrival shall order any supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and to enforce any other Federal agency requirements, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest and a Customs Form 7512–C (original and duplicate) shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as "permit" and "control" copies, and Customs Form 7512–C (original) shall be filed with Customs at the port of arrival. The duplicate shall accompany the shipment as provided in § 122.119(c)(2) of this part. Filing shall be made when the arriving aircraft enters, or before the lay order period ends, by the airline which presents a receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies, marked separately as "exportation" and "clearance" copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall then be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest in one storage space. This storage space shall be separate from the area in which special shipments which require a license under paragraph (g) of this section are stored.

(g) *Export license*—(1) *Review.* A Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information inadequate.* If the manifest information is not enough for Customs to determine that a license or other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When license or other requirement applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline's cargo terminal.

(h) *Filing of exportation and clearance copies*—(1) *Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show:

(i) The aircraft number;

(ii) The aircraft flight number; and

(iii) The date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Forms 7512 and 7512-C are required for each cargo shipment listed:

(1) For transportation and exportation under Subpart J of this part; or

(2) For direct exportation under § 18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, § 122.118(d) applies.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 40 days, the district director at the port of arrival shall take action as provided in § 122.119(d).

Subpart M—Aircraft Liquor Kits

§ 122.131 Application.

(a) *Liquor and tobacco.* Subpart M applies to:

(1) Duty-free and tax-free liquor and tobacco; and

(2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft.* Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

(1) Duty-free and tax-free liquor and tobacco withdrawn from bond under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309); or

(2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

§ 122.132 Sealing of aircraft liquor kits.

(a) *Sealing required.* Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be kept under seal while on the ground unless taken to an authorized airline in-bond liquor storeroom.

(b) *Exception.* When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

(1) The liquor kits are kept on board the aircraft; and

(2) The district director finds that sealing is not required for revenue protection.

(c) *Seals to be used.* Aircraft liquor kits shall be sealed with serially numbered, Customs approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in Part 24 of this chapter. A small number of seals may be obtained from the district director.

(d) *Removing seals.* When sealed liquor kits are on the ground, the Customs seals may be broken only by:

(1) A Customs officer; or

(2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing.* When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an approved seal.

§ 122.133 Stores list required on arrival.

(a) *When required, contents.* Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores list shall state for each type of liquor and bottle size:

(1) Number of full bottles;

(2) Number of partially filled bottles; and

(3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies.* One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

(1) One copy shall be filed with the inward cargo manifest; and

(2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear.* If an aircraft is not required to enter and/or clear:

(1) One copy shall be given to the Customs officer upon arrival; and

(2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.* When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by crew members under Customs supervision.

§ 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the district director, may be:

(1) Kept on board the aircraft;

(2) Removed and replaced upon the aircraft; or

(3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseal the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by this section. The lading shall be done under any supervision the district director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

§ 122.135 When airline has in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board an aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be removed and restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the district director. The inventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the district director:

(1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and

(2) Signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall immediately report to the district director any:

(1) Evidence of seal tampering;

(2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and

(3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits*—(1) *Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done only under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in § 122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

§ 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax-paid stock and added to liquor kits. The outgoing stores list shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of copies.* The two copies of the outgoing stores list shall be used as follows:

(1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and

(2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in § 122.133(c).

In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See § 122.133(c)).

§ 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

Subpart N—Flights to and From the U.S. Virgin Islands

§ 122.141 Definitions.

Under Subpart N, the following definitions apply:

(a) *United States.* The term "U.S." includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term "foreign area" means any area other than the several States, the District of Columbia and Puerto Rico.

§ 122.142 Flights between the U.S. Virgin Islands and a foreign area.

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the U.S. Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in the U.S. from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

§ 122.143 Flights from the U.S. to the U.S. Virgin Islands.

(a) *In general.* Aircraft on flights from the U.S. to the U.S. Virgin Islands are governed by the provisions of this part that apply to aircraft on a flight within the U.S.

(b) *Bureau of the Census.* When Bureau of the Census regulations (15 CFR Part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the district director. Permission to depart shall not be given unless:

(1) A complete manifest and Shipper's Export Declarations as required by 15 CFR Part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.24 is filed and the complete manifest and Shipper's Export Declarations are filed within 7 business days after departure.

§ 122.144 Flights from the U.S. Virgin Islands to the U.S.

(a) *Aircraft not inspected.* This paragraph applies to aircraft departing from the U.S. Virgin Islands and arriving in the U.S., without having been inspected prior to departure.

(1) *On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the U.S. Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in the U.S. from a foreign area.

(b) *Supervision.* When aircraft are inspected by Customs in the U.S. Virgin Islands, the district director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S.:

(i) Of domestic origin; or

(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding carrying neither passengers nor cargo, or with cargo and/or passengers solely from the U.S. Virgin Islands.

Two copies of the certificate shall be given to the inspecting Customs officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

(i) Of foreign origin;

(ii) Not duty paid; and

(iii) Proceeding carrying neither passengers nor cargo.

The permit to proceed, as required by Subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding carrying neither passengers nor cargo. The permit to proceed, as required under Subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under Subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

Subpart O—Flights to and From Cuba

§ 122.151 Definitions.

Under this subpart, the following definitions apply:

(a) *United States.* The term "U.S." includes the several States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(b) *Cuba.* The term "Cuba" does not include the Guantanamo Bay Naval Station.

§ 122.152 Application.

This subpart applies to all aircraft entering or departing the U.S. to or from Cuba except public aircraft. Public aircraft are covered by Subpart P.

§ 122.153 Limitations on airport of entry or departure.

The owner or person in command of any aircraft clearing the U.S. for, or entering the U.S. from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, shall clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida, and comply with the requirements in this part unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida.

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba shall give advance notice of arrival.

(b) *Procedure for giving advance notice of arrival.* The commander of an aircraft covered by this section shall give the advance notice of arrival not less than one (1) hour before crossing the U.S. coast or border. Notice shall be given either:

(1) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration); or

(2) Directly to the Customs officer in charge at the Miami International Airport, Miami, Florida.

(c) *Contents of notice.* The advance notice of arrival shall state:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Number of U.S. citizen passengers;

(4) Number of alien passengers;

(5) Place of last foreign departure;

(6) Estimated time and location of crossing the U.S. coast or border; and

(7) Estimated time of arrival.

§ 122.155 Document to be presented upon arrival.

Upon arrival, the aircraft commander shall present:

(a) A manifest of all passengers on board, as required by the U.S. Immigration and Naturalization Service pursuant to 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer;

(b) The documents required by Subpart E of this part.

§ 122.156 Release of passengers.

No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart before the passengers are released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

§ 122.157 Documents required for clearance.

As a condition precedent to clearance, the aircraft commander shall present to Customs:

(a) The documents required by Subpart H of this part; and

(b) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19 or a license issued by the Department of State, as provided in 22 CFR Part 123.

§ 122.158 Other entry and clearance requirements.

All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this subpart.

Subpart P—Public Aircraft [Reserved]

Subpart Q—Penalties

§ 122.161 In general.

Except as provided in § 122.14, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to a civil penalty of $5,000 as provided by 49 U.S.C. App. 1474, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival as required in which case the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under Part 171 of this chapter.

§ 122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

(1) The required notice and explanation are not made in time;

(2) The district director is not satisfied that the differences were caused by clerical error or other mistake;

(3) There has been a loss of revenue to the U.S.; or

(4) The district director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, "clerical error or other mistake" means a non-negligent, inadvertant, or typographical mistake, made when the manifest is prepared, assembled or submitted.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

(1) Shortage in delivery;

(2) Irregular delivery; or

(3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise.* The district director shall determine the value of merchandise for assessment purposes based on the following factors:

(1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and

(2) Other information available to the district director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the district director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. App. 1508(b)) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term "foreign civil aircraft" includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Carrier Rulings Branch. Liability should not be assessed under 49 U.S.C. App. 1471 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties.* Except as otherwise provided, any aircraft pilot in violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

(1) Advance notification of arrival;

(2) Report of arrival;

(3) Landing of aircraft;

(4) Presentation of documentation;

(5) Departure from the port, place, or airport of arrival without authorization; or

(6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties.* Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, that person shall be subject to an additional fine as set forth in 19 U.S.C. 1436 and described in paragraph (c) of this section.

(c) *Civil and criminal penalties described*—(1) *Civil penalty.* The pilot of any aircraft who fails to comply with the requirements of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any aircraft used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the pilot of any aircraft who intentionally fails to comply with the requirements of this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the aircraft is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than the equivalent of vessel sea stores, is imported or brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

§ 122.167 Aviation smuggling.

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than $10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section;

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxilliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling. **[TD 88-12.]**

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

Sec.

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Note 9, HTSUS), 1624, unless otherwise noted.

Source: The provisions of this Part 123 contained in T.D. 70-121, 35 FR 8215, May 26, 1970, unless otherwise noted.

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the U.S., commercial traveler's samples transiting the U.S. or Canada, and baggage arriving from Canada or Mexico including baggage transiting the U.S. or Canada or Mexico. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of Part 122 of this chapter. The arrival of vessels of less than 5 net tons by sea and of all vessels 5 net tons or over, and the clearance of all vessels departing for Canada or Mexico are governed by the provisions of Part 4 of this chapter. **[TDs 70-121, 88-12.]**

Subpart A—General Provisions

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Persons.* Any person arriving otherwise than in a vessel or vehicle from Canada or Mexico, who is importing or bringing in baggage or merchandise with him, shall immediately report his arrival to the Customs officer at the port of entry or customhouse nearest the place at which the boundary was crossed and shall not proceed until permission to proceed is granted.

(b) *Vehicles.* The person in charge of every vehicle arriving in the U.S. from Canada or Mexico, whether or not the vehicle is carrying passengers, baggage, or merchandise, shall immediately report arrival to the Customs officer at the port of entry or customhouse nearest the place at which the boundary was crossed and shall not proceed until permission to proceed is granted.

(c) *Vessels*—(1) *Less than 5 net tons arriving otherwise than by sea.* The master of every vessel of less than 5 net tons arriving from Canada or Mexico otherwise than by sea,

if carrying baggage or other merchandise shall immediately report arrival to the Customs officer at the port of entry or customhouse nearest the point at which the vessel entered the territorial waters of the U.S. and shall not proceed until permission to proceed is granted.

(2) *Other vessels.* For requirements applicable to vessels of less than 5 net tons arriving by sea, and to vessels of 5 net tons or over, see §§ 4.2 and 4.3 of this chapter. (Sec. 459, 46 Stat. 717, as amended; 19 U.S.C. 1459)

§ 123.1a Customs railroad car and commercial truck fees.

Each commercial truck, truck cab, and railroad car (except locomotives and cabooses), whether passenger or freight, whether empty or otherwise, which enters the customs territory of the U.S., is subject to the payment of fees for services provided them as set forth in §24.22 of this chapter. **[TD 86-109.]**

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Vehicles.* Whether or not a vehicle is carrying passengers, baggage, or merchandise, the penalty of $100 imposed by section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report or for proceeding inland without a permit applies.

(b) *Vessels of less than 5 net tons.* The penalty imposed by section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report or for proceeding inland without a permit applies only when such vessels are carrying baggage or merchandise. (Sec. 460, 46 Stat. 717, as amended; 19 U.S.C. 1460)

§ 123.3 Inward foreign manifest required.

(a) *General requirements.* Baggage or other merchandise carried on a vehicle or on a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico shall be listed on a manifest as prescribed by § 123.4. Vessels which are required to make entry under § 4.3 of this chapter because they are arriving by sea or are 5 net tons or over shall have manifests on board as provided in § 4.7(a) of this chapter.

(b) *Exception where in possession of traveler.* When baggage arrives in the actual possession of a traveler, his declaration will be accepted in lieu of a manifest. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest but shall be presented for inspection, and entry shall be made in accordance with the applicable laws and regulations. (Sec. 459, 46 Stat. 717, as amended; 19 U.S.C. 1459)

§ 123.4 Inward foreign manifest forms to be used.

The inward foreign manifest required by § 123.3 for a vehicle or a vessel of less than 5 net tons arriving in the U.S. from Canada or Mexico otherwise than by sea with baggage or merchandise, shall be on Customs Form 7533, except as provided for shipments in transit in Subparts C, D, E, F, and G of this part, in the following special cases:

(a) For merchandise free of duty entered on Customs Form 7523, the same form may be used as a manifest in lieu of other forms. (See § 143.23 of this chapter.) **[TD 73-175.]**

(b) For dutiable merchandise not exceeding $250 in value entered on Customs Form 5119-A (serially numbered) or Customs Form 7501, the same form may be used as a manifest in lieu of other forms. (See § 143.21 of this chapter.) The district director may also allow such merchandise to be entered informally upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent: **[TDs 73-175, 75-105, 87-75.]**

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(c) For a shipment not exceeding $250 in value consisting of articles of American origin entered free of duty under the provisions of § 10.1(f) of this chapter and imported in a vehicle, Customs Form 3311 used in entering the goods, in duplicate, may be accepted in lieu of a manifest.

(d) For baggage arriving in baggage cars, Customs Form 7533 shall be used. (See Subpart G of this part.) (R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (19 U.S.C. 66, 1484, 1498, 1624)) **[TD 82-145.]**

§ 123.5 Certification and filing of inward foreign manifest.

The manifest listing baggage and other merchandise, certified by the master of the vessel or the person in charge of the vehicle, shall be presented to the Customs officer at the time the report of arrival is made. It shall be filed in the original only, unless additional copies are required in this part.

§ 123.6 Train sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the Customs officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials.

§ 123.7 Manifest used as an entry for unconditionally free merchandise value not over $250.

When a shipment not exceeding $250 in value which is unconditionally free of duty and not subject to quota or to internal revenue tax arrives on a vessel of less than 5 net tons arriving otherwise than by sea, the inward foreign manifest on Customs Form 7533 may be presented in duplicate and used as an entry if:

(a) No merchandise for a different entrant is listed on the same page of the manifest,

(b) The country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed are noted thereon, and

(c) Evidence of the right to make entry is furnished as required by § 141.11 of this chapter. (Sec. 498(a), 46 Stat. 728, as amended; 19 U.S.C. 1498(a)) **[TD 73-175.]**

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* Before any passenger or merchandise, including baggage, may be landed or discharged from any vessel of less than 5 net tons arriving from Canada or Mexico by any route, or from a vehicle, permission to unlade shall be obtained from a Customs officer. Permission to unlade at night, on a Sunday or holiday, or to

lade at night on a Sunday or holiday merchandise requiring Customs supervision, shall be obtained from the district director of Customs. Permission to unlade is not required for a vessel of less than 5 net tons arriving otherwise than by sea carrying no baggage or other merchandise. For permission to unlade or lade for vessels of 5 net tons or over, see § 4.30 of this chapter.

(b) *Application for permit or special license to unlade or lade*—(1) *Permit to unlade during regular hours.* Application for a permit to unlade any vehicle or a vessel of less than 5 net tons may be made and permission may be granted orally. The district director of Customs may require that the application and permission to unlade be on Customs Form 3171.

(2) *Special license to unlade or lade at night, on a Sunday or holiday.* Application for permission to unlade passengers or merchandise from, or lade any merchandise requiring Customs supervision on, a vessel of less than 5 net tons or a vehicle arriving from or departing for Canada or Mexico by any route at night, on a Sunday or holiday, and requests for any reimbursable overtime services shall be made on Customs Form 3171. In the discretion of the district director of Customs and under such condition as he may deem advisable the application may be made orally for vessels of less than 5 net tons and vehicles not carrying persons or property for hire, but requests for reimbursable overtime services shall be on Customs Form 3171. The district director may authorize Customs inspectors to approve the request for overtime services and to grant oral permission to unlade or lade.

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, is on file or is filed with the request.

(d) *Term permit or special license.* A permit or special license required by this section may be issued on a term basis in the manner, and under the conditions applicable, described in § 4.30 (f) or (g) of this chapter. (Secs. 448, 450, 451, 452, 453, 454, 459, 46 Stat. 714, 715, as amended, 716, 717, as amended; 19 U.S.C. 1448, 1450, 1451, 1452, 1453, 1454, 1459) **[TD 84-213.]**

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions applicable.* (1) *Failure to file a manifest; overages.* If there is a failure to file a manifest in accordance with § 123.5, or if merchandise is found that is not listed on a manifest filed in accordance with that section (an overage), the merchandise and the vessel or vehicle in which it was brought or imported into the U.S. are subject to forfeiture, and the master of the vessel or the person in charge of the vehicle is liable, in addition to any other penalty, to a penalty equal to the value of the merchandise, under § 460, Tariff Act of 1930, as amended (19 U.S.C. 1460).

(2) *Shortages.* If merchandise is manifested but not found on board (a shortage), the master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy between the merchandise and manifest, shall be subject to a penalty of $500 under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(b) *Report of discrepancies.* (1) *Discrepancies discovered by master, person in charge, owner, agent, or person directly or indirectly responsible.* The master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, shall report any discrepancy to the district director within 60 days after the date of arrival by completing a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in § 123.4, or on Customs Form 5931, Discrepancy Report and Declaration. If no manifest had been filed, an original copy of the appropriate form, as listed in § 123.4, should be used. In each case in which a manifest form is used, the form shall be marked or stamped "Overage Report" or "Shortage Declaration", as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs.* The district director immediately shall advise the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy between the merchandise and the manifest of any discrepancy discovered by Customs officers which has not been reported. The person so notified shall file an explanation of the discrepancy, as required by paragraph (b)(1) of this section, within 30 days of notification, or within 60 days after arrival of the vessel or vehicle, whichever is later. The district director may notify the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate written means. Use of Customs Form 5931 shall not preclude assessment of any penalty or liability to forfeiture otherwise incurred.

(c) *Statement on report of discrepancy required.* The overage report or shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle, an authorized agent, or the person directly or indirectly responsible for the discrepancy:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of nonimportation or proper disposition of merchandise will be retained in the carrier's files for a period of at least one year from the date of this report of discrepancy and will be made available to Customs upon demand.

(d) *Action on the discrepancy report.* (1) In accordance with the proviso to 19 U.S.C. 1584, no penalty shall be incurred under that section if—

(i) The manifest discrepancy relates only to a shortage;

(ii) There is timely filing of the discrepancy report;

(iii) There has been no loss of revenue;

(iv) The district director is satisfied that the discrepancy resulted from clerical error or other mistake; and

(v) In the case of a discrepancy not reported initially by the master, person in charge, owner, agent, or the person directly or indirectly responsible, the district director is satisfied that there is a valid reason for failure to file the discrepancy report.

(2) If the criteria in paragraph (d)(1) are not met, applicable penalties under 19 U.S.C. 1460 or 19 U.S.C. 1584 shall be assessed, and the vessel or vehicle shall be liable to

forfeiture under 19 U.S.C. 1460 (see § 162.31 of this chapter).

(3) Any penalty or liability to forfeiture incurred under 19 U.S.C. 1460 or 19 U.S.C. 1584 may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(e) *Penalty assessment.* For the purpose of assessing penalties under 19 U.S.C. 1460 or 19 U.S.C. 1584, the value of the merchandise shall be determined as described in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability.* The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1460 or 1584.

(g) *Clerical error or other mistake defined.* For the purpose of this section, the term "clerical error or other mistake" is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same persons may be considered the result of negligence and not clerical error or other mistake. **[TD 80-236.]**

Subpart B—International Traffic

§ 123.11 Supplies on international trains.

(a) *Articles acquired abroad.* Articles subject to internal revenue tax and other merchandise acquired abroad constituting supplies arriving on international trains crossing and recrossing the boundary line, for which the train crew elects not to file an inventory as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival, and the lock or seal remains unbroken until the train departs from the U.S. at the final port of exit.

(b) *Inventory procedure.* Supplies acquired abroad for which internal revenue stamps are not required may be used in the U.S. under the following procedure:

(1) *Port of arrival.* An inventory executed in duplicate consisting of an itemized list showing the kind and quantity of each class of supplies on hand in the car with space for a parallel column in which to show at the port of exit the quantity used, shall be certified by the person in charge of the car and furnished to the Customs officer upon arrival. The Customs officer shall certify the correctness of both copies of the inventory, return the original to the person in charge of the car and retain the duplicate, or forward it to the port of exit if this differs from the port of arrival.

(2) *Port of exit.* Upon arrival at the port of exit, the inventory returned at the port of arrival to the person in charge of the car shall be submitted to the Customs officer after completion by showing the quantity of each item used in the U.S., and being certified by the person in charge of the car. Entries must be filed and applicable duties and taxes paid at the port of exit on the quantity of supplies consumed in the U.S.

(c) *Supplies purchased in the U.S.* Supplies purchased in the U.S. shall be passed free of duty without inventory or entry. (Sec. 465, 46 Stat. 718; 19 U.S.C. 1465)

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) *Use on a continuous route.* Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the U.S. shall be admitted without formal entry or the payment of duty to proceed to the end of the run and depart for a foreign country, in accordance with the following: **[TD 83-118.]**

(1) *On inward trip.* Unless formally entered and cleared through Customs into the U.S., a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the U.S. Other foreign railroad equipment may proceed to the place of complete unloading for any merchandise imported therein.

(2) *On outward trip.* Foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. Other foreign railroad equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt departure for a foreign country. **[TD 83-118.]**

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the U.S. without formal entry and payment of duty only if the passengers or goods to be loaded are to be transported directly to or through a foreign country. **[TD 83-118.]**

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). **[TD 79-160.]**

(d) *Domestic and foreign locomotives and other railroad equipment defined.* For the purpose of this section and section 123.13, locomotives or other railroad equipment manufactured in, or regularly imported into, the U.S., shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the U.S. Other locomotives and railroad equipment shall be considered "foreign". (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322) **[TD 73-73.]**

§ 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.

A report of the first arrival in the U.S. of a domestic locomotive or other railroad equipment after repairs have been made in a foreign country other than those required to restore it to the condition in which it last left the U.S. ("running repairs"), shall be made promptly, in writing, to the Customs officer at the port of re-entry. The report shall state the time and place of arrival, and the nature and value of the repairs. Each such locomotive or other piece of railroad equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than "running repairs"), made abroad at the rate at which the repaired article would be dutiable if imported. For the appropriate determination as to whether the locomotive or other railroad equipment should be considered "domestic" or "foreign", see § 123.12(d). (Sec. 14, 67 Stat. 516, 77A Stat. 14; 19 U.S.C. 1202, (Gen. Hdnte. 11), 1322) **[TD 73-73.]**

§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the U.S., or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit of registration by vehicle not on regular trip.* In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use on a regularly scheduled trip, the district director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the district director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic.* Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the U.S. unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the U.S. while in use on a regularly scheduled trip if such carriage is directly incidental to the international schedule.

(2) A foreign-based truck trailer may carry merchandise between points in the U.S. on its departure for a foreign country under the same conditions as are prescribed for "other foreign railroad equipment" in § 123.12(a)(2). **[TD 83-118.]**

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322) **[TD 79-160.]**

§ 123.15 Vehicles of foreign origin used between communities of the U.S. and Canada or Mexico.

Vehicles of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the U.S. and Canada or Mexico, such as delivery, peddlers', and service trucks, or wagons, are subject to duty on first arrival, but may thereafter be admitted without formal entry or the payment of duty so long as they are continuously employed in such service. (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the U.S. be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use on regularly scheduled trips in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of a regularly scheduled trip in international traffic shall be considered to have been exported and must be regularly entered on return. (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.

(a) *Domestic trucks, busses, and taxicabs and their equipment defined.* For the purpose of this section, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into the U.S., shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of their return to the U.S.

(b) *Report of arrival and payment of duty on repairs.* A report of the first arrival in the U.S. of domestic trucks, busses, and taxicabs and their equipment after repairs have been made in a foreign country, other than those required to restore such vehicle or equipment to the condition in which it last left the U.S. ("running repairs"), shall be made by the driver or person in charge of the vehicle promptly, in writing, to the Customs officer at the port of reentry. The report shall state the time and place of arrival and the nature and value of the repairs. Each such vehicle or its equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than "running repairs") made abroad at the rate at which the repaired article would be dutiable if imported. (Sec. 14, 67 Stat. 516, 77A Stat. 14; 19 U.S.C. 1202 (Gen. Hdnote 11), 1322)

§ 123.18 Equipment and materials for constructing bridges or tunnels between the U.S. and Canada or Mexico.

(a) *Admission of equipment and materials.* Equipment for use in construction of bridges or tunnels between the U.S. and Canada or Mexico shall be admitted without entry or the payment of duty. Materials for such use shall be admitted without entry or payment of duty only for installation in the bridge or tunnel proper, and not in the approaches on land at the U.S. end of such bridge or tunnel.

(b) *Customs supervision.* All articles admitted under paragraph (a) of this section shall be subject to Customs supervision at the expense of the builder until installed, entered, or exported. (Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

Subpart C—Shipments in Transit Through Canada or Mexico

§ 123.21 Merchandise in transit.

(a) *Status.* Merchandise may be transported from one port to another in the U.S. through Canada or Mexico in accordance with the regulations in this subpart of Subparts E for trucks transiting Canada, F for commercial traveler's samples, or G for baggage. Merchandise so transported is not subject to treatment as an importation when returned to the U.S., and no inward foreign manifest is required for merchandise returned under an in-transit manifest. In-transit merchandise returned to the U.S. shall be treated as an importation as are shipments made from Canada or Mexico if:

(1) An in-transit manifest is not furnished for the merchandise upon its return to the U.S.;

(2) The merchandise has been transshipped in foreign territory without Customs supervision when the transshipment required the breaking of Customs seals; or

(3) The Customs inspector finds any of the Customs seals applied to the conveyance or compartment unlocked or missing.

(b) *Use of certain vessels prohibited.* Merchandise shall not be transported from port to port in the U.S. through Canada or Mexico by vessel in violation of the provisions of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or § 588, Tariff Act of 1930, as amended (19 U.S.C. 1588). (See § 4.80 of this chapter.)

(c) *Regulations applicable.* The provisions of this subpart shall govern all merchandise transported from one port to another in the U.S. through Canada or Mexico under in-transit procedures, except as otherwise provided in this subpart or in Subpart E. for truck shipments transiting Canada, Subpart F for commercial traveler's samples transiting Canada, and Subpart G for baggage transiting Canada or Mexico. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.22 In-transit manifest.

(a) *Manifest required.* A manifest in duplicate covering the in-transit merchandise which is to proceed under the provisions of this subpart shall be presented by the carrier to the Customs officer at each port of lading of a vessel, or at the port of exit of a vehicle. Where the merchandise is transported under Customs red in-bond seals and is accompanied by a transportation in-bond manifest, a separate in-transit manifest is not required.

(b) *Additional copies.* In the following cases additional copies of the manifest shall be presented:

(1) When the merchandise is to be transshipped in foreign territory under Customs supervision, a copy of the manifest for each place of transshipment shall be presented.

(2) When a Customs officer requests an extra copy of the manifest as a record of the transaction.

(c) *Manifest forms to be used.* The in-transit manifest forms to be used are:

(1) For trucks, railroad cars or other overland carriers transiting Mexico a manifest on Customs Form 7512–B or 7533–C shall be presented.

(2) For vessels of less than 5 net tons departing and arriving otherwise than by sea, a manifest on Customs Form 7512–B or 7533–C shall be presented. All other vessels are subject to the manifesting requirements contained in § 4.82 of this chapter.

(3) For rail cars transiting Canada, a manifest on Customs Form 7533–C (Canada A4–1/2) shall be presented. For trains which will remain intact while transiting Canadian territory, a consolidated train manifest containing all the information included in the individual car manifests and the train sheet required by § 123.23 may be used in lieu of individual car manifests. For a number of cars which will transit Canada as a group, a consolidated manifest may be used, but a train sheet shall also be presented.

(4) In all other cases where no in-transit manifest form is specified in this subpart, or in Subpart E relating to truck shipments on the Canadian border, Subpart F relating to commercial traveler's samples, and Subpart G relating to baggage, Customs Form 7512–B or 7533–C shall be presented.

(d) *Contents of in-transit manifest.* The information contained in the manifest shall correspond to the information contained in the waybill accompanying the shipment, except that:

(1) The conveyance shall be identified in a suitable manner in the place provided for such identification.

(2) The description of ladings made up of several shipments which are to go forward in a conveyance or compartment sealed with Customs seals shall be "miscellaneous shipments."

(3) When an in-transit rail shipment will enter and reenter Canada in a continuing movement en route to a final destination in the U.S., only the final U.S. port of reentry shall be shown on the manifest. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.23 Train sheet for in-transit rail shipments.

Before an in-transit train proceeding under the provisions of this subpart departs from the U.S., the carrier shall furnish to the customs officer at the port of exit a train sheet, sometimes called a consist, bridge sheet or trip sheet, listing each car of the train and specifically identifying the in-transit cars, unless a consolidated manifest containing this information has been presented for a train which will remain intact. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.24 Sealing of conveyances or compartments.

(a) *Sealing required.* Merchandise in transit proceeding under the provisions of this subpart shall be transported in sealed conveyances or compartments, except that:

(1) Less than load or compartment lots may be forwarded in unsealed conveyances or compartments, without cording and sealing;

(2) The Commissioner of Customs may authorize treatment of full loads or lots in the same manner as less than load or compartment lots;

(3) Live animals identifiable by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest, in unsealed conveyances or compartments.

(b) *Seals to be affixed.* The carrier shall affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise except that:

(1) Sealable carload shipments on the Canadian border shall be sealed with yellow in-transit seals.

(2) Conveyances or compartments sealed with U.S. Customs red in-bound seals may go forward without additional seals.

(c) *Carrier relieved of responsibility.* The district director of Customs may relieve the carrier of the responsibility of affixing in-transit seals by notification in writing that Customs inspectors will assume it. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1551)

§ 123.25 Certification and disposition of manifests.

(a) *Certification.* Conveyances proceeding under the provisions of this subpart shall not proceed until the Customs inspector has certified the in-transit manifest or verified its certification by the carrier. The district director may require

the carrier to execute the certificate as an alternative to certification by the Customs officer. When the carrier is to execute the certificate, and the merchandise will be forwarded without being under Customs seals, the agent of the carrier shall carefully examine the packages covered by the manifests to satisfy himself that the merchandise agrees with the manifest as to quantity and description.

(b) *Disposition of manifest.* The original manifest, after certification, shall accompany the merchandise. Additional copies required when the merchandise is to be transshipped in Canada or Mexico under Customs supervision shall be given to the person in charge of the conveyance for delivery to the Customs officers who will supervise transshipment. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.26 Transshipment of merchandise moving through Canada or Mexico.

(a) *General.* Merchandise in transit proceeding under the provisions of this subpart may be transshipped from one conveyance to another in foreign territory. When transshipment requires the breaking of Customs seals, the breaking of the seals, transshipment and sealing of the conveyance or compartment to which the merchandise is transshipped shall be under the supervision of a Customs officer. He shall note his action on both the additional copy of the manifest presented to him, in accordance with § 123.25(b), and on the original copy, which shall be returned to the person in charge of the conveyance to accompany the merchandise. Merchandise transshipped in foreign territory without customs supervision when Customs seals were broken shall be treated upon return to the U.S. as imported merchandise.

(b) *Storage awaiting transshipment.* Merchandise moving under in-transit manifests and Customs seals which is to be stored in foreign territory awaiting transshipment shall be checked into a storehouse by the Customs officer at the place of transshipment. It shall remain under Customs locks and seals until transshipment is completed under Customs supervision.

(c) *Manifests where contents broken up.* When transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, in such a manner as to require separate manifests for articles previously covered by a single manifest, the Customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate, for each conveyance to which the merchandise is transshipped. If there is to be further transshipment, an additional copy of each new manifest shall be presented by the carrier, and shall be returned to the person in charge of the carrier for delivery to the Customs officer at the point of further transshipment in accordance with § 123.25(b). After the transshipment and sealing of the conveyances and compartments has been supervised and the new manifests certified the originals of the new manifests shall be returned to the carrier to accompany the merchandise to the point of reentry into the U.S. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.27 Feeding and watering animals in Canada.

If animals in sealed conveyances or compartments cannot be fed and watered in Canada without breaking customs seals, the seals shall be broken and the animals fed and watered under the supervision of a U.S. or Canadian Customs officer. The supervising officer shall reseal the conveyance or compartment, and make notation as to the resealing on the manifest. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.28 Merchandise remaining in or exported to Canada or Mexico.

(a) *In-transit status abandoned.* When the in-transit status of merchandise transiting Canada or Mexico is abandoned and the merchandise is entered for consumption or other disposition in Canada or Mexico, the carrier shall send the in-transit seals and manifests to the port where the manifests were first filed with U.S. Customs, or in the case of trucks under Subpart E, the port of exit, with an endorsement by the carrier's agent on each manifest showing that the merchandise was so entered. The carriers shall comply with the export control regulations, 15 CFR Part 370.

(b) *In-transit merchandise exported to Canada or Mexico.* Merchandise to be exported to Canada or Mexico after moving in-transit through a contiguous country shall be treated as exported when it has passed through the last port of exit from the U.S. This paragraph shall control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, shipper's export declaration, and the notice of exportation, if any, shall be filed at the last port of exit from the U.S. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.29 Procedure on arrival at port of reentry.

(a) *Presentation of documents.* At the first port in the U.S. after transportation through Canada or Mexico under the provisions of this subpart, the carrier shall present to Customs the in-transit manifest or manifests for each loaded conveyance. For mixed ladings, that is, ladings made up of several shipments, the waybills shall be available at the port of return or discharge for use by Customs officers. For a railroad train for which a consolidated manifest was not used the conductor shall also present a train sheet showing the car numbers and initials.

(b) *Vessels and rail shipments continuing in-transit movement*—(1) *Vessels.* In the case of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifest covering the merchandise given final Customs release at that port shall be retained by Customs at that port and the manifests covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for presentation to Customs at the next port.

(2) *Rail shipments.* An in-transit rail shipment arriving at an intermediate port of reentry or exit intended for further in-transit movement through Canada may be permitted to go forward under the accompanying in-transit manifest after verification by Customs that the manifest satisfactorily identifies the shipment.

(c) *Checking and breaking of seals*—(1) *Checking seals.* The Customs officer at the port of arrival shall check customs seals applied to the conveyance or compartment for unlocked or missing seals. Where the seals are unlocked or missing, the merchandise shall be treated as having been imported from the transited country.

(2) *Breaking seals.* In-bond seals shall be broken only by a Customs officer or by a person acting under the direction of a Customs officer. In-transit seals may be broken by any

carrier's employee, or by a consignee at any time or place after the merchandise under such seals has been released by Customs.

(d) *Proper manifest.* In-transit merchandise shall not be released until proper in-transit manifests are received except that it may be treated as imported merchandise.

(e) *Substitution of merchandise.* Any instance of substitution of merchandise shall be reported to the Commissioner of Customs, and the merchandise shall be detained. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

Subpart D—Shipments in Transit Through the U.S.

§ 123.31 Merchandise in transit.

(a) *From one contiguous country to another.* Merchandise may be transported in transit across the U.S. between Canada and Mexico under the procedures set forth in Part 18 of this chapter for merchandise entered for transportation and exportation.

(b) *From one point in a contiguous country to another through the U.S.* Merchandise may be transported from point to point in Canada or in Mexico through the U.S. in bond in accordance with the procedures set forth in §§ 18.20 to 18.24 of this chapter except where those procedures are modified by this subpart or Subparts E for trucks transiting the U.S., F for commercial traveler's samples, or G for baggage. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.32 Manifests.

(a) *Form and number of copies required.* Three copies of the transportation entry and manifest on Customs Form 7512 shall be presented upon arrival of merchandise which is to proceed under the provisions of this subpart.

(b) *Consolidated train manifest.* When the route is such that a train will remain intact while proceeding through the U.S., a consolidated train manifest containing the same information as is required on individual manifests may be used.

(c) *Disposition of manifest form.* One copy of the manifest shall be delivered to the person in charge of the carrier to accompany the conveyance and be delivered to the Customs officer at the final port of exit. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.33 Sealable rail shipments at Canadian border.

No seals other than the green in-transit seals placed on cars prior to departure from Canada shall be required for sealable carload shipments arriving at frontier ports for in-bond movement through the U.S. and return to Canada if:

(a) The sealing has been verified by Canadian Customs officers, and

(b) The seals are found to be properly attached and locked. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.34 Certain vehicle and vessel shipments.

In the following circumstances, the copy of Customs Form 7512 to be retained at the port of first arrival may be adapted for use as a combined inward foreign manifest and in-bond transportation or direct exportation entry:

(a) When all the merchandise arriving on one vehicle (except on trucks on the Canadian border) is to move in bond in the importing vehicle in a continuing movement through the U.S.; or

(b) When all the merchandise arriving on one vessel or on one vehicle (except on trucks on the Canadian border) is entered immediately upon arrival either under a single immediate transportation entry or a single transportation and exportation or direct exportation entry.

When Customs Form 7512 is to be used in this manner, the foreign port of lading and the name of the shipper shall be shown in every case, and a certificate in the following form shall be legibly stamped on the manifest or on a separate paper securely fastened thereto and executed by the master of the vessel or the person in charge of the vehicle:

This entry correctly covers all the merchandise on the vessel or vehicle, of which I am the master or person in charge, when it first arrived in the U.S. If an error in the quantity, kind of article, or other details is discovered, I will immediately report the correct information to the district director of Customs. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

Subpart E—U.S. and Canada In-Transit Truck Procedures

§ 123.41 Truck shipments transiting Canada.

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the U.S. will be manifested on U.S.-Canada Transit Manifest, Customs Form 7512-B, Canada 8 1/2. The driver shall present the manifest in four copies to U.S. Customs at the U.S. port of departure for review and validation.

(b) *Procedure at U.S. port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated U.S.-Canada Transit Manifest Customs Form 7512-B Canada 8 1/2, in four copies to the Canadian Customs officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the U.S. port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no irregularities. After verification and certification

of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the U.S. port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to the U.S.

(d) *Procedure at the U.S. port of reentry.* The driver of a truck reentering the U.S. after transiting Canada shall present a certified copy of the U.S.-Canada Transit Manifest, Customs Form 7512–B, Canada 8 1/2, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the U.S. through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554) **[TD 81–85.]**

§ 123.42 Truck shipments transiting the U.S.

(a) *Manifest required.* Trucks with merchandise transiting the U.S. from point to point in Canada will be manifested on U.S.-Canada Transit Manifest, Customs Form 7512–B, Canada 8 1/2. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to U.S. Customs at the U.S. port of entry.

(c) *Procedure at U.S. port of arrival—(1) Presentation of manifest.* The driver shall present a validated U.S.-Canada Transit Manifest, Customs Form 7512–B Canada 8 1/2, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest with the related Customs Form 7512–C (destination) to the driver for presentation to U.S. Customs at the U.S. port of exit.

(2) *Sealing or waiver of sealing.* Trucks transiting the U.S. will be sealed with red in-bond seals at the U.S. port of arrival unless sealing is waived in accordance with § 18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the U.S. under bond.

(d) *Procedure at U.S. port of exit.* The driver shall present the three validated copies of the manifest and the related Customs Form 7512–C (destination) to the U.S. Customs officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of reentry.* The driver of a truck reentering Canada after transiting the U.S. shall present a certified copy of the U.S.-Canada Transit Manifest, Customs Forms 7512–B Canada 8 1/2, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the U.S. port of exit, the driver shall be allowed to return to that port to have it certified.

(f) *Proof of exportation from U.S.* The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553) **[TD 81–85.]**

(g) *Forwarding procedure.* Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1–18.8 of this chapter). **[TD 84–212.]**

Subpart F—Commercial Traveler's Samples in Transit Through the U.S. or Canada

§ 123.51 Commercial samples transported by automobile through Canada between ports in the U.S.

(a) *General provisions.* A commercial traveler arriving at a U.S. frontier port desiring to transport his commercial samples by automobile through Canada to another place in the U.S. without displaying the samples in Canada may request a U.S. Customs officer at the port of departure to cord and seal the outer containers of the samples if they can be effectively corded and sealed.

(b) *List of samples.* The traveler shall furnish the U.S. Customs officer at the port of exit a list, in duplicate, of all the articles in the containers, with their approximate values, in substantially the following form:

Samples Carried in Transit Through Canada in Private Vehicle

_____

(U.S. port of exit printed here) (Date)

I have checked the quantity and values of the below-listed articles carried by _____ (Name and address of

traveler) and owned by _____ (Name and address of firm or company)
These articles are contained in _____ (Number) packages which have been corded and sealed for in-transit movement through Canada to _____ (U.S. port of reentry) in _____ (Year, make and license number of vehicle)

_____
(U.S. Customs Inspector)

Description of merchandise *Value*

_____
_____
_____

When the traveler arrives at Customs with lists already prepared, the form may be inscribed "as per list attached."

(c) *Checking, cording, and sealing by U.S. Customs officers.* The Customs office shall check the list with the articles and satisfy himself that the values shown are approximately correct. The Customs officer will cord and seal the containers with yellow in-transit seals. The traveler may be required to assist the Customs officer in the cording and sealing. The original of the list, signed by the Customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers shall be returned to the traveler for submission by him to Canadian customs upon his arrival in Canada.

(d) *In-transit manifest.* The traveler shall execute and file Customs Form 7512–B or 7533–C, in the original only, at the U.S. port of departure, as an in-transit manifest covering the movement of the samples to the U.S. port through which the traveler will return. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples" and the number of corded and sealed containers. The manifest shall be returned to the traveler to accompany the samples after being signed and dated by the Customs officer.

(e) *Presentation of in-transit manifest at U.S. port of reentry.* Upon return to the U.S., the traveler shall present Customs Form 7512–B or 7533–C and the corded and sealed samples to the U.S. Customs officer at the port where the samples are returned to this country. The Customs officer shall verify that there has been no irregularity. (Sec. 554, 46 Stat. 743; 19 U.S.C. 1554) **[TD 82–145.]**

§ 123.52 Commercial samples transported by automobile through the U.S. between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the U.S., upon compliance with this section and subject to the conditions of § 18.20(b), since Customs bonded carriers as described in § 18.1 of this chapter are not considered to be reasonably available. Samples having a total value of not more than $200 may be carried by a nonresident commercial traveler through the U.S. without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter. **[TD 73–27.]**

(b) *Presentation of sample list at Canadian port of exit.* A commercial traveler arriving from Canada desiring to transport without display in the U.S. commercial samples in his automobile through the U.S. to another port in Canada, may present his samples to a Canadian Customs officer at the Canadian port of exit. The traveler will be required to furnish the Canadian Customs officer a list in duplicate of all articles presented showing their approximate values. The list shall bear the traveler's name and address, and the name and address of the firm represented.

(c) *Checking, cording, and sealing by Canadian Customs officers.* The Canadian Customs officer will examine the articles, identify them with the list, and satisfy himself that the values shown are approximately correct. The Canadian Customs officer will cord and seal the outer containers with uncolored in-transit seals and authenticate the list of samples with his signature and title. Cording and sealing may be waived with the concurrence of the U.S. and Canadian Customs officers.

(d) *Treatment at U.S. port of arrival.* The list of samples properly authenticated shall be submitted upon arrival to the U.S. Customs officer at the port of arrival. After ascertaining that the samples are effectively corded and sealed, or that sealing has been waived, notation of the number of corded and sealed containers, or of the waiver shall be made on the list of samples and the list shall be retained by the Customs officer as a record of the shipment.

(e) *In-transit manifest.* Movement of the samples from the port of arrival to the port of exit from the U.S. under this procedure shall be under an in-transit manifest on Customs Form 7512 executed and filed in triplicate by the traveler at the port of arrival in the U.S. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples," the number of corded and sealed containers, and the approximate total value of the samples. When cording and sealing has been waived with the concurrence of a Canadian Customs officer, samples must be identified on the manifest by suitable itemized descriptions and approximate values, or by attaching to the manifest a copy of the list of samples which has been initialed by the Customs officer.

(f) *Presentation of samples and manifest at U.S. port of exit.* The manifest on Customs Form 7512 shall be presented to the Customs officer at the U.S. port of exit, together with the samples covered. If the seals are broken or cording and sealing has been waived, the Customs officer shall verify that there are no irregularities. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553) **[TD 87–75.]**

Subpart G—Baggage

§ 123.61 Baggage arriving in baggage car.

An inward foreign manifest on Customs Form 7533 shall be used for all baggage arriving in baggage cars. **[TD 82–145.]**

§ 123.62 Baggage in possession of traveler.

For baggage arriving in the actual possession of a traveler, his declaration shall be accepted in lieu of an inward foreign manifest. (See § 123.3.) **[TD 73–27.]**

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers shall not unlock a vehicle or compartment thereof for the purpose of examining baggage unless the owner or operator refuses to unlock such vehicle or compartment.

(b) *Inspection of baggage.* Customs officers shall not open baggage for the purpose of making the inspection required by section 461, Tariff Act of 1930 (19 U.S.C. 1461), but shall detain such baggage until its owner or his agent

opens or refuses to open it. If the owner or his agent refuses to open the baggage, it shall be opened and examined in accordance with the provisions of section 462, Tariff Act of 1930 (19 U.S.C. 1462), unless a request is received from the owner or his agent to make other proper disposition thereof. (Sec. 461, 462, 46 Stat. 717, 718; 19 U.S.C. 1461, 1462)

§ 123.64 Baggage in transit through the U.S. between ports in Canada or in Mexico.

(a) *Procedure.* Baggage in transit from point to point in Canada or Mexico through the U.S. may be transported in bond through the U.S. in accordance with the procedures set forth in §§ 18.13, 18.14, and 18.20–18.24 of this chapter except where those procedures are modified by this section.

(b) *In-transit manifest.* Three copies of the manifest on Customs Form 7512 shall be required. One copy of the Form 7512 and related Customs Form 7512–C (destination) shall be delivered to the person in charge of the carrier to accompany the baggage and shall be delivered by the carrier to the Customs officer at the port of departure from the U.S. **[TDs 71–70, 84–212, 87–75.]**

(c) *Consolidated train manifest.* When the route is such that a train carrying baggage in bond will remain intact while proceeding through the U.S., a consolidated train manifest containing the same information as is required on individual manifests may be used in lieu of individual manifest on Customs Form 7512.

(d) *Baggage cards*—(1) *Baggage arriving from Mexico.* For baggage arriving at a port on the Mexican border for in-transit movement through the U.S. in bond and return to Mexico, the in-transit baggage card described in § 18.14 of this chapter shall be used.

(2) *Baggage arriving from Canada.* For baggage arriving at a port on the Canadian border for in-transit movement through the U.S. in bond and return to Canada, the joint U.S.-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used. The baggage card will be filled out and securely attached to the baggage and the attachment verified by a Canadian Customs officer before the baggage leaves Canada. If the joint in-transit baggage card is found to be improperly prepared or attached upon arrival of the baggage in the U.S. for movement in bond, the carrier may be required to furnish the baggage card described in § 18.14 of this chapter for attachment to the baggage before being allowed to proceed. At the port of exit from the U.S. the joint in-transit baggage card shall be allowed to remain on the baggage. (Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553) **[TD 87–75.]**

§ 123.65 Domestic baggage transiting Canada or Mexico between ports in the U.S.

(a) *General provision.* Upon request of the carrier, checked baggage of domestic origin may be transported from one port in the U.S. to another through Canada or through Mexico in accord with the procedure set forth in this section. The provisions of this section shall not apply to domestic hand baggage crossing Canada or Mexico which, upon reentry into the U.S., shall be examined in the same manner as baggage of foreign origin.

(b) *Special in-transit tag manifest.* The carrier shall complete and attach to each piece of baggage by wire or cord under Customs supervision a special in-transit tag manifest furnished by the carrier as follows:

(1) *Baggage transiting Mexico.* For baggage of domestic origin to be transported through Mexico between ports of the U.S., the special in-transit tag manifest attached to each piece of baggage shall be on white cardboard not less than 2½ X 4½ inches in size printed in substantially the following form:

U.S. Customs In-transit baggage manifest

Carrier's Baggageman: Destroy this tag if owner has access to baggage before its return to U.S.

Check No. _____

This baggage is in transit from _____ (Port of exit) through foreign territory to _____ (Port of reentry) in the U.S.

This baggage was laden for transportation as above stated.

Date _____

_____

(U.S. Customs Officer)

(2) *Baggage transiting Canada.* For baggage of domestic origin to be transported through Canada between ports in the U.S., the joint U.S.-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used as the special in-transit tag manifest attached to each piece of baggage. **[TD 87–75.]**

(c) *Removal of special in-transit tag manifest.* The special in-transit tag manifest shall be removed only by the Customs officers at the final port of reentry into the U.S. If the officer finds the special in-transit tag manifest missing or not intact, or for any other reason believes that the baggage has been tampered with while outside the U.S., he shall detain it for examination. Otherwise, baggage transported under the procedure in this section may be passed without examination.

(d) *Procedure in lieu of special in-transit tag manifest.* In lieu of attaching the special in-transit tag manifest to each piece of baggage as set forth in paragraph (b) of this section, baggage of domestic origin may be forwarded in a car or compartment sealed with in-transit seals and manifested as in the case of other merchandise in transit through Canada or Mexico, as provided in Subpart C of this part.

Subpart H—Miscellaneous Provisions

§ 123.71 Merchandise found in building on the boundary.

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the U.S. and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the building or that portion thereof which is within the U.S. shall be taken down or removed. The provisions of Subpart B of Part 162, of this chapter shall be applicable to the search of any such building. (Sec. 595, 46 Stat. 752; 19 U.S.C. 1595) **[TD 72–211.]**

§ 123.72 Treatment of stolen vehicles returned from Mexico.

District directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series TIAS 10653), of June 23, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes. **[TD 86-118.]**

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

Sec.

125.0 Scope.

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125.35 Report of loss, detention or accident.
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125.41 Liability of cartman or lighterman.
125.42 Cancellation of liability.

Authority:—R.S. 251, as amended, secs. 565, 624, 46 Stat. 747, as amended, 759; 19 U.S.C. 66, 1565, 1624. Additional authority and statutes interpreted or applied are cited in parentheses following the sections affected.

Source: T.D. 73—140, 38 FR 13554, May 23, 1973, unless otherwise noted.

§ 125.0 Scope.

This part is concerned with cartage and lighterage of merchandise and the duties and liabilities of cartmen and lightermen. Provisions for licensing cartmen and lightermen are in Part 112 of this chapter. **[TD 78-140]**

Subpart A—General Provisions

§ 125.1 Classes of cartage.

(a) *Government cartage.* Government cartage must be done by a licensed customhouse cartman under contract or other specific authority for that purpose (except as provided for in § 125.12).

(b) *Importers' cartage.* Importers' cartage may be done by any licensed customhouse cartman.

§ 125.2 Supervision of cartage and lighterage.

All licensed vehicles or lighters shall be subject to the control and direction of the officer having charge of the merchandise being carried.

§ 125.3 Contracts for Government cartage.

Contracts for Government cartage shall be procured by formally advertised solicitation for bids and award of contract or by negotiation in accordance with the appropriate provisions of the Federal Procurement Regulations, as supplemented by the special procurement requirements of the U.S. Customs Service.

Subpart B—Cartage of Packages for Examination

§ 125.11 Cartage for examination in public stores.

(a) *Government cartage.* The cartage of merchandise in Customs custody designated for examination at the public stores shall be done by a licensed customhouse cartman under contract or other specific authority for that purpose.

(b) *Where there is no contract for Government cartage.* At ports where there is no contract for Government cartage in effect, the cartage of packages designated for examination at the public stores shall be done by a licensed customhouse cartman designated by the district director for this purpose.

(c) *Payment for Government cartmen.* The cost of the cartage shall be paid from the appropriation "Salaries and Expenses; Bureau of Customs."

§ 125.12 Cartage for examination at importers' premises or other place.

Merchandise designated for examination at an importer's premises or other place not in the charge of a Customs officer may be carted, lightered, or carried to any such place by the importer without a cartman's or lighterman's license, when in the judgment of the district director the revenue will not be endangered. Otherwise, such transfer shall be done by a licensed cartman, who shall be the contract cartman whenever practicable.

§ 125.13 Cartage of merchandise withdrawn from general order for regular entry.

When merchandise withdrawn from general order for regular entry is to be conveyed to a place designated by the district director for examination, the cartage shall be at the expense of the importer and shall be under the cartage arangements established at the port for hauling examination packages under the provisions of § 125.11(a) and (b). Reimbursement of the cost of the cartage shall be collected from the importer prior to release of the merchandise from Customs custody.

§ 125.14 Cartage of unclaimed merchandise.

Unclaimed merchandise shall be carted to the public stores or a bonded warehouse designated by the district director under the cartage arrangements established at the port for hauling examination packages under the provisions of § 125.11. Reimbursement of the cost of the cartage shall be collected from the importer prior to release if entry is made or from the proceeds of sale of the merchandise. **[TD 78-151.]**

Subpart C—Importers' Cartage

§ 125.21 Cartage other than for examination.

Any licensed customhouse cartman, including an importer licensed to cart his own imported merchandise, at

the expense of the importer or other party in interest, may transfer merchandise from the importing vessel or other conveyance to bonded warehouse, from one vessel or conveyance to another, from one bonded warehouse to another, from the public stores to a bonded warehouse, from warehouse for transportation or for exportation, and from an internal revenue warehouse for exportation under the internal revenue laws without payment of tax. Nothing in this section shall apply to the cartage of examination packages to the place of examination.

§ 125.22 Designation of cartman or lighterman.

Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman or lighterman by whom they wish their merchandise to be conveyed. Approval of such designation shall be indicated on the entry papers by the initials of the appropriate Customs officer placed in close proximity to the designation.

§ 125.23 Failure to designate.

If an importer does not cart his merchandise or designate a licensed customhouse cartman for the purpose, it shall be carted by a public store cartman authorized by contract or designated by the district director for that purpose. The cost of such cartage shall be paid by the importer or owner of the merchandise before its release from Customs custody.

§ 125.24 Failure of designated cartman or lighterman to appear.

The cartman or lighterman designated to convey the merchandise shall be present to take the merchandise when the Customs officer in charge is ready to send it. If the designated vehicle or lighter is not present, after waiting a reasonable time, such officer shall send the merchandise by any licensed cartman or lighterman available.

Subpart D—Delivery and Receipt

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7501, Entry Summary, annotated "Permit".

(c) Customs Form 7505-A—Warehouse Withdrawal for Consumption (Permit).

(d) Customs Form 7506—Warehouse Withdrawal Conditionally Free of Duty, and Permit.

(e) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit. **[TD 84-129.]**

§ 125.32 Merchandise delivered to a bonded store or bonded warehouse.

When merchandise is carted or lightered to and received in a bonded store or bonded warehouse, the proprietor or his representative shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, the document acknowledging receipt of the merchandise as listed thereon. **[TD 84-129.]**

§ 125.33 Procedure on receiving merchandise.

(a) *From public or bonded store.* A receipt shall be taken from the cartman or lighterman for all goods delivered to him from public store or bonded store. The receipt may be taken on Customs Form 6043, or on the appraising officer's release ticket at the time delivery is made.

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document. **[TD 82-204.]**

(c) *All other cases.* A receipt shall be taken for all goods delivered from Customs custody in any other case where the district director deems such receipt necessary.

§ 125.34 Countersigning of documents and notation of bad order or discrepancy.

When a cartman or lighterman receives merchandise remaining in Customs custody, he shall countersign the appropriate document in the space provided and shall note thereon any bad order or discrepancy. When available, the importing carrier's tally slip for the merchandise shall be attached to the delivery ticket which accompanies the merchandise while it is being carted or lightered in bond, for the use of Customs officers only at destination.

§ 125.35 Report of loss, detention, or accident.

Any loss or detention of bonded merchandise, or any accident happening to a licensed vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman or lighterman to the district director.

§ 125.36 Inability to deliver merchandise.

If the warehouse is closed or the warehouseman refuses to receive the merchandise, the cartman shall notify the appropriate Customs inspector. The inspector shall promptly report the facts to the district director or his delegated representative for instructions. The merchandise shall then be returned to the Customs inspector, deposited in the public stores for safekeeping, or handled as ordered by the district director.

Subpart E—Liability

§ 125.41 Liability of cartman or lighterman.

The cartman or lighterman conveying the merchandise, including merchandise covered by a TIR carnet which has not been "taken on charge" (see § 114.22(c)(2) of this chapter), shall be liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is so noted. (Sec. 623, 46 Stat. 759, as amended; 19 U.S.C. 1623)

§ 125.42 Cancellation of liability.

The district director may cancel liquidated damages not in excess of $50,000 incurred under the bond of the cartman or lighterman on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as he may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter. (Sec. 623, 46 Stat. 759, as amended; 19 U.S.C. 1623) **[TDs 73-308, 84-213.]**

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Sec.

127.0 Scope.

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127.2 Withdrawal from general order for entry or exportation.
127.4 General order period defined.

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127.21 Time of sale.
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127.31 Disposition of proceeds.
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Authority: R.S. 251, as amended, § 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624. Other statutory provisions interpreted or applied and additional authority are cited in the text or in parentheses following the sections affected.

Source: 39 FR 12092, Apr. 3, 1974, unless otherwise noted.

§ 127.0 Scope.

This part sets forth regulations pertaining to general order merchandise, unclaimed merchandise, and abandoned merchandise, the storage and sale thereof, and the distribution of the proceeds from the sale thereof. Regulations regarding the abandonment of merchandise by the importer to the Government in accordance with § 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), appear in Part 158 of this chapter. **[TD 74-114.]**

Subpart A—General Order Merchandise

§ 127.1 Merchandise considered general order merchandise.

Merchandise shall be considered general order merchandise when it is taken into the custody of the district director and deposited in the public stores or a general order warehouse at the risk and expense of the consignee for any of the following reasons:

(a) Whenever entry of any imported merchandise is not made within the time provided by law or regulations prescribed by the Secretary of the Treasury.

(b) Whenever entry is incomplete because of failure to pay estimated duties.

(c) Whenever, in the opinion of the district director, entry cannot be made for want of proper documents or other causes.

(d) Whenever the district director believes that any merchandise is not correctly or legally invoiced.

(e) Whenever, at the request of the consignee or the owner or master of the vessel or person in charge of the vehicle in which merchandise is imported, any merchandise is taken possession of by the district director after the expiration of 1 day after entry of the vessel or report of the vehicle. (Sec. 490, 46 Stat. 726, as amended; 19 U.S.C. 1490)

§ 127.2 Withdrawal from general order for entry or exportation.

(a) *Exportation within 1 year from date of importation.* Merchandise in general order may be exported without examination or appraisement if the merchandise is delivered to the exporting carrier within 1 year from the date of importation. This merchandise may be entered within 1 year from date of importation for immediate transportation to any port of entry designated by the consignee.

(b) *After expiration of 1 year from date of importation.* Entry for immediate transportation shall be permitted after the expiration of the 1-year period only for the purpose of filing an entry for consumption at the port of destination.

(c) *Withdrawal of less than single general order lot.* The withdrawal from general order of less than a single general order lot shall not be permitted except as provided for in § 141.52 of this chapter. (Sec. 490, 46 Stat. 726, as amended; (19 U.S.C. 1490))

§ 127.4 General order period defined.

The general order period is that period of time during which general order merchandise, as defined in Section 127.1, is not subject to sale. The general order period expires 1 year from the date of importation. **[TDs 75-161, 79-221.]**

Subpart B—Unclaimed and Abandoned Merchandise

§ 127.11 Unclaimed merchandise.

Any entered or unentered merchandise (except merchandise under § 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), but including merchandise entered for transportation in bond or for exportation) which remains in Customs custody for 1 year from the date of importation, or a lesser period for special merchandise as provided by §§ 127.28 (c), (d), and (h), and without all estimated duties and storage and other charges having been paid, shall be considered unclaimed and abandoned. (Sec. 491, 46 Stat. 726, as amended; (19 U.S.C. 1491).) **[TD 79-221.]**

§ 127.12 Abandoned merchandise.

(a) *Involuntarily abandoned merchandise.* The following shall be considered to be involuntarily abandoned merchandise:

(1) Articles entered for a trade fair under the provisions of § 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which are still in Customs custody at the expiration of 3 months after the closing date of the fair for which they were entered. (See § 147.47 of this chapter.)

(2) Any imported merchandise upon which any duties or charges are unpaid, remaining in a bonded warehouse beyond the 5-year warehouse period. [TD 79-221.]

(b) *Voluntarily abandoned merchandise.* The following merchandise shall be considered to be voluntarily abandoned merchandise and the property of the U.S. Government:

(1) Merchandise which is taken possession of by the district director at the request of the consignee, or owner or master of the vessel or person in charge of the vehicle in which the merchandise was imported.

(2) Merchandise abandoned by the importer to the U.S. within 30 days after entry in the case of merchandise not sent to the public stores for examination, or within 30 days after the release of the examination packages or merchandise in the case of merchandise sent to the public stores for examination.

(3) Articles entered for a trade fair under the provisions of § 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which have been abandoned to the U.S. within 3 months of the closing of the fair.

(4) Merchandise in a bonded warehouse abandoned by the consignee within 3 years from the date of original importation. (See subpart D of Part 158 of this chapter.) (Secs. 490, 506, 559, 563, 46 Stat. 726, as amended, 732, as amended, 744, as amended, 746, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1490, 1506, 1559, 1563, 1753))

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* Unclaimed and abandoned merchandise shall be sent under a permit to a class 1 warehouse (public store) or to a suitable warehouse of class 3, 4, or 5 specially designated for the purpose by the district director. If no warehouse of these classes is available, the district director may, with the approval of the Commissioner of Customs, rent suitable premises in a class 2 warehouse. (For permit to discharge unclaimed cargo which is not unladen see § 4.37(f) of this chapter.)

(b) *Payment of storage and expenses.* Storage at the ordinary rates and all other expenses shall be paid by the owner or consignee of the merchandise upon entry thereof. If the goods are sold, such charges shall be paid from the proceeds of the sale to the extent that proceeds are available. (Sec. 490, 46 Stat. 726, as amended (19 U.S.C. 1490))

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale.* If storage or other charges due the U.S. have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise shall be sold as provided for in subpart C of this part unless entered or withdrawn for consumption in accordance with paragraph (b) of this section. [TD 75-161.]

(b) *Entry of merchandise subject to sale.* Merchandise subject to sale (except merchandise abandoned under § 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1), 1563(b))), may be entered or withdrawn for consumption at any time prior to the sale upon payment of the duties, any internal revenue tax, and all charges and expenses that may have accrued thereon. Such merchandise may not be exported without payment of duty nor entered for warehouse.

(c) *Release of merchandise to warehouse proprietor.* The following merchandise for which a permit to release has been issued shall be held to be no longer in the custody of Customs officers and shall be released to the warehouse proprietor:

(1) Merchandise upon which all duties and charges have been paid. [TD 79-221, 82-204.]

(2) Free and duty-paid merchandise upon which all charges have been paid, not entered for warehouse which remains in bonded warehouse for more than the general order period. (Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559))

Subpart C—Sale of Unclaimed and Abandoned Merchandise

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise shall be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the Commissioner of Customs. Regular sales shall be made once every year or more often at the discretion of the district director. (Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1559, 1753)

§ 127.22 Place of sale.

All merchandise at a port other than a district headquarters port, which becomes subject to sale (including explosives, perishable articles and articles liable to depreciation) shall be promptly reported to the headquarters port for disposition. The district director at that port, in his discretion, may authorize the sale of such merchandise, as well as merchandise at the headquarters port which is subject to sale, at any port within his district, or in any other district. The consignee of any merchandise which is to be transferred from the district where it was imported to another district for sale, shall be notified of the transfer so that he may have the option of making entry for the merchandise before the transfer and sale. [TD 87-63.]

§ 127.23 Appraisement of merchandise.

Before unclaimed and abandoned merchandise is offered for sale, it shall be appraised in accordance with §§ 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). Such merchandise shall also be appraised at its actual domestic value in its condition at the time and place of examination, whether or not it has depreciated or appreciated in value since the date of exportation. The quantity of merchandise in each lot shall be reported. (Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.24 Notice of sale.

Notice of sale shall be sent to Customs Form 5251, 30 days prior to the date of sale, or 30 days prior to the transfer of merchandise to the place of sale, to the following:

(a) Importer, if known; or

(b) Consignee, if name and address can be ascertained; or

(c) Shipper, his representative or agent, if merchandise is consigned to order or consignee cannot be ascertained; or

(d) Warehouse transferee; or

(e) Lienholder. (Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.25 Advertisement of sale.

(a) *Regular advertising.* Except as prescribed in §§ 127.28(c), (d), and (h), and in paragraph (b) of this section, a brief notice of the time and place of sale shall be given for three successive weeks, immediately preceding the sale, in one newspaper of extensive circulation published at the port where the sale is to be held. The newspaper is to be selected by the district director and publication of the notice shall be authorized on the standard form provided for that purpose. The notice shall designate the place where catalogs may be obtained and a reasonable opportunity to inspect the merchandise shall be afforded prospective purchasers.

(b) *Where proceeds are insufficient to pay expenses and duties.* If the district director is satisfied that the proceeds of the sale will not be sufficient to pay the expenses and duties, a written or printed notice of the sale in lieu of the advertisement shall be conspicuously posted in the customhouse, and, if deemed necessary, at some other proper place for the time specified in paragraph (a) of this section. (Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559)

§ 127.26 Catalogs.

Catalogs, if used shall specify the description of packages, the description and quantities of their contents, the appraised value thereof, and also the domestic value at the time and place of the examination of the merchandise. They shall be distributed at the sale and announcement made that the Government does not guarantee quality or value and that no allowance will be made for any deficiency found after sale. (Secs, 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.27 Conduct of sale.

Sales may be conducted by the district director, any employee designated by him or by a public auctioneer. (Secs, 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by Department of Agriculture.* Before drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture are advertised, they shall be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. If found not to comply with such requirements, they shall be immediately destroyed.

(b) *Pesticides and devices.* Pesticides and devices intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than man or other than bacteria, virus, or other microorganism on or in living man or other living animals) shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with the requirements of the law and regulations of that agency. If found not to comply with such requirements, they shall be immediately destroyed.

(c) *Explosives, dangerous articles, fruit, and perishables.* Unclaimed explosives and other dangerous articles, and fruit and other perishable articles shall be sold after 3-days' public notice. When it is probable that entry will be made at an early date for unclaimed perishable merchandise, the district director may hold the merchandise for a reasonable time in a bonded cold-storage warehouse if one is available.

(d) *Articles liable to depreciation.* Other unclaimed merchandise shall be sold at public auction upon public notice of not less than 6 or more than 10 days, as the district director may determine, if in his opinion such merchandise will depreciate and sell for an amount insufficient to pay the duties, storage, and other charges if allowed to remain in general order for 1 year.

(e) *Tobacco and tobacco products.* Tobacco articles and tobacco materials as defined in 26 U.S.C. 5702(j) and (k), may be sold for domestic consumption only if they will bring an amount sufficient to pay the expenses of sale as well as the internal revenue tax. If these articles cannot be sold for domestic consumption in accordance with the foregoing conditions, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(f) *Distilled spirits, wines, and malt beverages.* All unclaimed and abandoned distilled spirits, wines, and malt beverages may be sold for domestic consumption if they will bring an amount sufficient to pay the internal revenue tax. If they cannot be sold for domestic consumption in accordance with the foregoing condition, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. The sale must be conducted in accordance with the alcoholic beverage laws of the state in which the sale is held.

(g) *Other merchandise subject to internal revenue taxes.* All other unclaimed and abandoned merchandise subject to internal revenue taxes may be sold for domestic consumption if it will bring an amount sufficient to pay the internal revenue tax. If, in the opinion of the district director, it is insufficient in value to justify its sale, the merchandise shall be destroyed, unless it can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(h) *Unclaimed merchandise remaining on dock.* Unclaimed merchandise remaining on the dock which, in the opinion of the district director, will not sell for enough to pay

the cost of cartage and storage shall be sold at public auction upon public notice of not less than 6 or more than 10 days. (Secs. 491, 492, 46 Stat. 726, as amended, 727, as amended, sec. 201, 72 Stat. 1412, 68A Stat. 716, as amended, 86 Stat. 995; (19 U.S.C. 1491, 1942, 26 U.S.C. 5688, 5753).)

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in § 3, Toxic Substances Control Act ("TSCA") and § 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter. **[TD 83-158.]**

§ 127.29 Unsold merchandise.

Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the district director is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed. (Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559).)

Subpart D—Proceeds of Sale

§ 127.31 Disposition of proceeds.

From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(a) Internal revenue taxes.

(b) Expenses of advertising and sale.

(c) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see § 127.32 of this subpart.)

(d) Duties.

(e) Any other charges due the U.S. in connection with the merchandise.

(f) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law. (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1493, 1559, 1753).)

§ 127.32 Expenses of cartage, storage, and labor.

The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(a) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (pro-rated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(b) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (pro-rated when proceeds are insufficient to pay them fully). (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559).)

§ 127.33 Chargeable duties.

The duties chargeable on any merchandise within the purview of this subpart shall be assessed on the appraised dutiable value at the rate of duty chargeable at the time the merchandise became subject to sale. Household and personal effects of the character provided for in Chapter 98, Subchapter XV, HTSUS (19 U.S.C. 1202), which belong to persons who have not arrived in this country before the effects become subject to sale, are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive and make entry for the effects before they are sold. (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559).) **[TD 89-1.]**

§ 127.34 Auctioneer's commissions.

The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be based on the amount of the successful bid. (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559).)

§ 127.35 Presentation of accounts.

Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the district director for payment within 10 days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for different lots sold. (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559).)

§ 127.36 Claim for surplus proceeds of sale.

(a) *Filing of claim.* Claims for the surplus proceeds of the sale of unclaimed or abandoned merchandise shall be filed with the district director at whose direction the merchandise was sold. The following shall be used in filing a claim:

(1) *Unclaimed merchandise.* Claims for surplus proceeds of the sale of unclaimed merchandise which has become abandoned and sold under § 491 of the Tariff Act of 1930, as amended (19 U.S.C. 1491), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(2) *Involuntarily abandoned merchandise—* (i) *Warehouse goods deemed abandoned.* Claims for surplus proceeds of sale of warehouse goods deemed involuntarily abandoned sold under § 559 of the Tariff Act of 1930, as amended (19 U.S.C. 1559), shall be established by reference to the warehouse entry, or, if the right to withdraw the merchandise from warehouse has been transferred, by reference to the documents by which the transfer was made.

(ii) *Trade fair articles deemed abandoned.* Claims for surplus proceeds of sale of trade fair articles deemed involuntarily (mandatorily) abandoned under § 4 of the Trade Fair Act of 1959 (19 U.S.C. 1753(c)), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic copy or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading. (See § 147.47 of this chapter.)

(b) *Payment of claim.* If a claim of the owner or consignee of unclaimed or abandoned merchandise for the surplus

proceeds of sale is properly established as provided in this section, such proceeds of sale shall be paid to him pursuant to § 493 of the Tariff Act of 1930, as amended (19 U.S.C. 1493).

(c) *Doubtful claims.* Any doubtful claims for the proceeds of sale along with all pertinent documents and information available to the district director shall be forwarded to the Commissioner of Customs for instructions or for referral to the General Accounting Office for direct settlement. (Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18 (19 U.S.C. 1491, 1493, 1559, 1753))

§ 127.37 Insufficient proceeds.

(a) *Warehouse merchandise deemed involuntarily abandoned.* If the proceeds of sale of warehouse merchandise deemed involuntarily abandoned are insufficient to pay the duties after payment of all charges having priority, the deficiency shall be collected under the bond for the importation and entry of merchandise on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(b) *Unclaimed merchandise and trade fair articles involuntarily abandoned.* If the proceeds of sale of unclaimed merchandise or trade fair articles involuntarily abandoned are insufficient to pay the charges and duties, the consignee shall be liable for the deficiency unless the merchandise was shipped to him without his consent. If no entry for the merchandise has been filed, and no other attempt to control the merchandise has been made, the merchandise shall be regarded as shipped to the consignee without his consent and no effort shall be made to collect any deficiency of duties or charges from such consignee. (Secs. 491, 492, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18 (19 U.S.C. 1491, 1492, 1493, 1559, 1753)) **[TD 84-213.]**

PART 132—QUOTAS

Sec.

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Authority: 19 U.S.C. 66, 1202 (Gen. Note 9, HTSUS), and 1624.

Source: T.D. 73-203, 38 FR 20230, July 30, 1973, unless otherwise noted.

§ 132.0 Scope.

This part sets forth rules and procedures applicable to quotas administered by Headquarters, U.S. Customs Service. **[TD 73-203.]**

Subpart A—General Provisions

§ 132.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Absolute (or quantitative) quotas.* "Absolute (or quantitative) quotas" are those which permit a limited number of units of specified merchandise to be entered or withdrawn for consumption during specified periods. Once the quantity permitted under the quota is filled, no further entries or withdrawals for consumption of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise not by source but by total quantity.

(b) *Tariff-rate quotas.* "Tariff-rate quotas" permit a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced duty rate during a specified period.

(d) *Presentation.* Presentation is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see sec. 141.0a(b)), or

(2) A withdrawal for consumption, with estimated duties attached.

(e) *Quota-class merchandise.* "Quota-class merchandise" is any imported merchandise subject to limitations under an absolute or a tariff-rate quota.

(f) *Quota priority.* "Quota priority" is the precedence granted to one entry or withdrawal for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota.

(g) *Quota status.* "Quota status" is the standing which entitles quota-class merchandise to admission under an absolute quota, or to a reduced rate of duty under a tariff-rate quota, or to any other quota benefit.

§ 132.2 Enactment and administration of quotas.

(a) *Enactment.* Tariff-rate quotas and absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. These documents are published in the ***Customs Bulletin.***

(b) *Administration.* Quotas vary by the type of commodity involved, the country of exportation, the period or periods the quota is open and the type of quota. Quotas are divided into two categories: Quotas administered directly by Headquarters, U.S. Customs Service, and quotas administered by other agencies which are enforced by Headquarters, U.S. Customs Service, and which may require special procedures or special documentation in accordance with the regulations and directives of the particular agency involved.

(c) *Strict construction employed.* The terms of a Presidential proclamation, Executive order, or legislative enactment establishing a quota, and the regulations implementing the quota, must be strictly complied with.

§ 132.3 Observation of official hours.

An entry summary for consumption or a withdrawal for consumption for quota-class merchandise shall be presented only during official office hours, except as provided in §§ 132.12 and 141.62(b) of this chapter. For purposes of administering quotas, "official office hours" shall mean 8:30 a.m. to 4:30 p.m. in all time zones. **[TD 79-221.]**

§ 132.4 Quota quantity entry limits.

At the opening of the quota no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota.

§ 132.5 Merchandise imported in excess of quota quantities.

(a) *Absolute quota merchandise.* Absolute quota merchandise imported in excess of the quantity admissible under the applicable quota must be disposed of in accordance with paragraph (c) of this section.

(b) *Tariff-rate quota merchandise.* Merchandise imported in excess of the quantity admissible at the reduced quota rate under a tariff-rate quota is permitted entry at the higher duty rate. However, it may be disposed of in accordance with paragraph (c) of this section.

(c) *Disposition of excess merchandise.* Merchandise imported in excess of either an absolute or a tariff-rate quota may be held for the opening of the next quota period by placing it in a foreign-trade zone or by entering it for warehouse, or it may be exported or destroyed under Customs supervision.

§ 132.6 Exception to reduced rates.

Reduced or modified duty rates under tariff-rate quotas established pursuant to § 350 of the Tariff Act of 1930, as amended and extended (19 U.S.C. 1351), are not applicable to products imported directly or indirectly from the countries or areas listed under General Note 3(e), HTSUS (19 U.S.C. 1202). [TD 89-1.]

Subpart B—Administration of Quotas

§ 132.11 Quota priority and status.

(a) *Determination of quota priority and status.*—Quota priority and status are determined as of the time of presentation of the entry summary for consumption, or withdrawal for consumption, in proper form in accordance with § 132.1(d).

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption which serves as both the entry and the entry summary, or by a withdrawal for consumption, which is not in proper form, or for which duties have not been attached or deposited in proper form, shall not be regarded as entered for purposes of quota priority and shall not acquire quota status. See §§ 141.4, 141.63, 141.68, 141.69, and 141.101 of this chapter. [TD 79-221.]

(c) *Informal entries.* Mail entries or informal entries shall be regarded as presented for purposes of quota priority when all requirements have been met for the preparation of such an entry.

(d) *Premature presentation of entry or withdrawal.* Quota status will not attach to merchandise in a quota period by reason of the presentation of an entry or withdrawal for consumption at any time prior to the opening of that period.

§ 132.11a Time of presentation.

(a) *General Rule.*—Except as provided in paragraph (b) of this section, the time of presentation of an entry for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached, or

(2) A withdrawal for consumption, with estimated duties attached.

(b) *Before arrival of merchandise.*—The entry summary for consumption, without estimated duties attached, may be submitted for preliminary review before the merchandise arrives within the limits of the port where entry is to be made. In that case, the time of presentation of the entry summary for consumption shall be the time estimated duties are deposited after the importing carrier arrives within the port limits. [TD 79-221.]

§ 132.12 Procedure on opening of potentially filled quotas.

(a) *Preliminary review before opening.*—When it is anticipated that a quota will be filled at the opening of the quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall not be presented before 12 noon eastern standard time in all time zones. However, an entry summary for consumption, or withdrawal for consumption, for merchandise which has arrived within the Customs territory of the U.S. may be submitted for preliminary review without deposit of estimated duties within a time period before the opening approved by the district director. Submission of these documents before opening will not accord the merchandise quota priority or status.

(b) *Simultaneous presentation.*—Special arrangements shall be made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens shall be given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form (including those submitted for review before opening of the quota period if accompanied by the deposit of estimated duties) shall be considered to have been presented simultaneously.

(c) *Proration of quantities.*—The quantities on all entry summaries for consumption, or withdrawals for consumption, submitted simultaneously shall be prorated by headquarters against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. Merchandise in excess of the quota shall be disposed of in accordance with § 132.5.

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. The time of presentation for quota purposes, in that event, shall be the exact moment of the opening of the quota provided—

(i) An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is deposited within 5 working days after headquarters authorizes release of the merchandise, and

(ii) The importer takes delivery of the merchandise within 15 working days after release is authorized. [TD 79-221.]

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.*—To secure for each importer the rightful quota priority and status for his quota-class merchandise, and to close the quota simultaneously at all ports of entry—

(1) *For release of merchandise.*

(i) *Tariff-rate.*—When instructed by headquarters, the district director shall require an importer to present an entry summary for consumption, with estimated duties attached, at the over-quota rate of duty until headquarters has determined the quantity, if any, of the merchandise entitled to the quota rate. If any of the merchandise entered at the over-quota rate is entitled to the quota rate, Customs shall amend the entry summary and refund to the importer any excess duties paid. This section does not prohibit an importer from obtaining release of the merchandise under the immediate delivery procedure. If an importer desires to enter only that quantity entitled to the quota rate, he may request that the merchandise not be released from Customs custody until headquarters has determined the quantity entitled to the quota rate.

(ii) *Absolute.*—Except as provided for in § 142.21 (e)(2) and (g) of this chapter, absolute quota merchandise shall not be released under the immediate delivery procedure. An entry summary for consumption, with estimated duties attached, setting forth the quantity desired to be entered, shall be presented. However, the merchandise shall not be

released until Customs has determined the quantity entitled to absolute quota status and priority.

(iii) *Quota Proration.* When it is determined that entry summaries for consumption or withdrawals for consumption must be amended to permit only the quantity of tariff-rate and absolute quota merchandise determined to be within the quota, the entry summaries for consumption or withdrawals for consumption must be returned to the importer for adjustment. The time of presentation for quota purposes in that event shall be the same as the time of the initial presentation of the entry summaries for consumption or withdrawals for consumption provided—

(A) An adjusted entry summary for consumption, or withdrawals for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(B) The importer takes delivery of the merchandise within 15 working days after release is authorized. **[TD 81-260.]**

(2) *Notation on entry papers.*—The appropriate Customs officer shall note the exact date, hour, and minute of presentation on each entry summary for consumption, or withdrawal for consumption, and shall report these facts to Headquarters. **[TD 79-221.]**

(b) *Closing of the quota.* Except as provided by § 132.12, at the closing of a quota all entries or withdrawals for consumption which have acquired quota status due to priority of presentation shall be entitled to quota benefits. All other entries or withdrawals are without quota status and are not entitled to any quota benefits. All the latter shall be disposed of in accordance with § 132.5.

§ 132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.

(a) *Effect of issuance of special permit for immediate delivery or filing entry documentation before presentation of entry summary.*

(1) *Requirements for release.*—Quota-class merchandise shall not be released upon filing entry documentation before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached. However, quota-class merchandise may be released under a special permit for immediate delivery in accordance with § 142.21(e) of this chapter.

(2) *Effect of release under immediate delivery.*—Release of quota-class merchandise under a special permit for immediate delivery before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, shall not accord merchandise any quota priority or status or entitle it to any other quota benefit.

(3) *Effect of inadvertent release.*—Inadvertent release under a special permit for immediate delivery, or upon filing entry documentation, before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, shall not accord the merchandise any quota priority or status or entitle it to any other quota benefit.

(4) *Procedures following inadvertent release.*

(i) *Quota nearing fulfillment.*—If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and the quota is nearing fulfillment, the district director—

(A) May demand the return to Customs custody of the released merchandise in accordance with § 141.113 of this chapter,

(B) Shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with the estimated duties attached, and

(C) May assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (1) released before presentation of an entry summary for consumption or a withdrawal for consumption, with estimated duties attached; (2) the merchandise is not returned to Customs custody within 30 days from the date of demand for redelivery; or (3) the entry summary for consumption, or the withdrawal for consumption, with estimated duties attached, is not presented timely.

(D) The district director may cancel the claim for liquidated damages if he is satisfied by the evidence that release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for the release, and that there was no intent on the part of the importer to evade any law or regulation. The district director also may cancel the claim for liquidated damages if the merchandise is redelivered to Customs custody within 30 days from the date of the demand, or if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(ii) *Quota not nearing fulfillment.*—If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and the quota is not nearing fulfillment, the district director—

(A) Shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and

(B) May assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (1) released before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached; or (2) if the entry summary for consumption, or the withdrawal for consumption with estimated duties attached, is not presented timely.

(C) The district director may cancel the claim for liquidated damages if he is satisfied by the evidence that the release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for release, and that there was no intent on the part of the importer to evade any law or regulation.

The district director also may cancel the claim for liquidated damages if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(b) *Permit of delivery.*—(1) *Effect of filing.*—The issuance of a permit of delivery shall not accord the merchandise any quota priority or status nor entitle it to any other quota benefit.

(2) *Time of issuance.*—(i) *Absolute quota merchandise.*—A permit of delivery for merchandise subject to an absolute quota shall not be issued before a determination of the quota status of the merchandise.

(ii) *Tariff-rate quota merchandise.*—A permit delivery for merchandise subject to a tariff-rate quota shall not be issued before a determination of the quota status of the merchandise unless estimated duties are deposited at the over-quota rate of duty. **[TD 79–221, 84–213.]**

Subpart C—Mail Importation of Absolute Quota Merchandise

§ 132.21 Regulations applicable.

In addition to the regulations applicable to all mail importations (see Part 145 of this chapter), the regulations in this subpart shall apply to mail importations of absolute quota merchandise.

§ 132.22 When quota is filled.

Any packages containing merchandise subject to an absolute quota which is filled shall be returned to the postmaster for return to the sender immediately as undeliverable mail. The addressee will be notified on Customs Form 3509 or in any other appropriate manner that entry has been denied because the quota is filled.

§ 132.23 Partial release procedure.

(a) *Notification of quota restrictions.* If because of quota restrictions, a mail importation cannot be released, the district director at the port of destination shall notify the addressee on Customs Form 3509 of the procedure required by paragraph (b) of this section, and shall inform the addressee that upon return of the Acknowledgement of Delivery by Postal Service, the packages admissible under the absolute quota will be forwarded to him and the restricted packages will be returned to the sender as inadmissible. The district director may at his discretion hold packages if it appears that the absolute quota will reopen in less than 30 days.

(b) *Acknowledgement of delivery.* An Acknowledgement of Delivery by Postal Service shall be sent to the addressee. He shall be advised that if he desires to secure release of less than the total number of packages of the merchandise, the Acknowledgement of Delivery by Postal Service must be signed by him and returned to the district director. Such Acknowledgment of Delivery by Postal Service shall be in the following form:

Acknowledgment of Delivery by Postal Service

In consideration of the fact that certain articles in a mail importation consisting of _____ (state number) packages mailed to me by _____ (name of sender) of _____ (address) on _____ (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and the Postal Service permits no division of the importation before delivery thereof, and since I am desirous of receiving the packages of such importation which are admissible to entry under the quota administered by the U.S. Customs, I hereby agree and acknowledge that delivery of the package or packages to the U.S. Customs shall be regarded as delivery by the Postal Service to me.

_____

(Signature of addressee)

(c) *Agreement to less than full delivery.* If, in any case, the sender of a mail package has indicated his agreement to the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Postal Service need not be secured from the addressee.

(d) *Deposit required.* If a portion of a mail shipment may be released, the district director may require a deposit of an amount sufficient to defray the expenses of repacking merchandise for shipment by mail to the addressee. The shipment shall be under Government frank without new postage.

§ 132.24 Entry.

Unless a formal entry or entry by appraisement is required, a mail entry on Customs Form 3419 shall be issued and forwarded with the package to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail package subject to Customs treatment.

§ 132.25 Undeliverable shipment.

If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the district director an intention to receive delivery of the packages or a portion thereof in accordance with the notice on Customs Form 3509 which was sent to him by the district director, the importation shall be treated in the same manner as other undeliverable mail.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

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Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart D also issued under sec. 109, 61 Stat. 664; 17 U.S.C. 109, unless otherwise noted.

Source: T.D. 72-266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the U.S. Customs Service for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances. **[TD 72-266.]**

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs Service if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart. (Secs. 28, 42, 60 Stat. 436, 440; 15 U.S.C. 1096, 1124)

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) "Common ownership" means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) "Common control" means effective control in policy and operations and is not necessarily synonymous with common ownership. (Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.3 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8" x 10-½" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper. **[TDs 73-174, 84-133.]**

(b) *Fee.* The application shall be accompanied by a fee of $190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation

shall be $190 for each class for which the applicant desires to record the trademark with the U.S. Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $570 is payable. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a) [TD 75–160.]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the U.S. Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the Patent Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the U.S. Customs Service shall be canceled if the trademark registration is finally canceled or revoked. (Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the U.S. Customs Service, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $80, which covers all trademarks included in the application which have been previously recorded with the U.S. Customs Service. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a) [TD 75–160.]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Commissioner of Customs, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name as changed; and

(b) A fee of $80, which covers all trademarks included in the application which have been previously recorded with the U.S. Customs Service. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a) [TD 75–160.]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted Customs protection for trademarks, the trademark owner shall submit a written application to renew Customs recordation to the Commissioner of Customs not later than 3 months after the date of expiration of the current 20-year trademark registration issued by the Patent Office. A timely application to renew a Customs recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of $80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of $80 is required for each class. A check or money order shall be made payable to the U.S. Customs Service. [TD 75–160.]

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Commissioner of Customs, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3. (Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the U.S. Customs Service. Words or designs used as trademarks, whether or not registered in the Patent Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used. (Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated. (Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of $190 for each trade name to be recorded. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a) **[TD 75–160.]**

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the ***Federal Register*** and the ***Customs Bulletin.*** The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the ***Federal Register*** and the ***Customs Bulletin.***

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the Commissioner of Customs may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse. (Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

Subpart C—Importations Bearing Recorded Trademarks or Trade Names

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

(a) *Copying or simulating marks or names.* Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations. A "copying or simulating" mark or name is an actual counterfeit of the recorded mark or name or is one which so resembles it as to be likely to cause the public to associate the copying or simulating mark with the recorded mark or name.

(b) *Identical trademark.* Foreign-made articles bearing a trademark identical with one owned and recorded by a citizen of the U.S. or a corporation or association created or organized within the U.S. are subject to seizure and forfeiture as prohibited importations.

(c) *Restrictions not applicable.* The restrictions set forth in paragraphs (a) and (b) of this section do not apply to imported articles when:

(1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;

(2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control (see §§ 133.2(d) and 133.12(d));

(3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner;

(4) The objectionable mark is removed or obliterated prior to importation in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(5) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(6) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraphs (a) and (b) of this section, and such consent is furnished to appropriate Customs officials; or

(7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under §148.55 of this chapter. **[TD 79–159.]**

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(4) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see §133.24). (Sec. 42, 60 Stat. 440, sec. 526, 46 Stat. 741; 15 U.S.C. 1124, 19 U.S.C. 1526) **[TD 79–159.]**

§ 133.22 Detention of articles subject to restrictions.

(a) *In general.* Articles subject to the restrictions of § 133.21 shall be detained for 30 days from the date of notice to the importer that such restrictions apply to permit the importer to establish that any of the circumstances described in § 133.21(c) are applicable.

(b) *Notice of detention.* Notice of detention of articles found subject to the restrictions of § 133.21 shall be given the importer in writing, except that for articles accompanying the importer or arriving by mail, notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the U.S., the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Failure to obtain release in 30 days.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of Part 171 of this chapter.

§ 133.23 Release of detained articles.

(a) *General.* Articles detained in accordance with § 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in § 133.21(c) are established.

(b) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(1) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(2) The request of the importer to obtain skillful removal of the marks is granted by the district director on such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) The provisions of subparagraphs (1) and (2) are not applicable to articles bearing counterfeit trademarks at the time of importation (see §133.24) or to trademarked articles exempt from import restrictions under § 526(d), Tariff Act of 1930, as amended (19____ U.S.C. 1526(d)) (see §148.55 of this chapter). **[TD 79-159.]**

(c) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less may be exported or destroyed at the request of the addressee or may be released if:

(1) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(2) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the district director on such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

§ 133.23a Articles bearing counterfeit trademarks.

(a) *Definition.* A "counterfeit trademark" is a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article imported into the U.S. bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the Customs laws.

(c) *Notice to trademark owner.* The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with §133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of Part 171 of this chapter. **[TD 79-159.]**

§ 133.24 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.21, the district director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter. **[TDs 73-175, 74-227, 84-213.]**

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record.* The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. "Copyright owner," with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right. **[TDs 73-212, 87-40.]**

(c) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

§ 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container. **[TDs 77-201, 87-40.]**

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An "additional certificate" of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright. [TD 87–40.]

(2) Five photographic or other likenesses reproduced on paper approximately 8" x 10-½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work. [TDs 73–174, 77–201, 84–133.]

(b) *Fee.* Each application shall be accompanied by a fee of $190 for each copyright to be recorded. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 501, 65 Stat. 290; 31 U.S.C. 483a) [TD 75–160.]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the U.S. Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of copyright shall remain in effect for 20 years unless the copyright ownership of the recordant expires before that time. If the ownership expires in less than 20 years, recordation shall remain in effect until the ownership expires. If the ownership has not expired after 20 years, recordation may be renewed as provided in § 133.37. [TD 87–40.]

(c) *Cancellation.* Recordation of a copyright with the U.S. Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the U.S. Customs Service, he shall make written application to the Commissioner of Customs as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of $80, which covers all copyrights included in the application which have been previously recorded with the U.S. Customs Service. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 501, 65 Stat. 290; 31 U.S.C. 483a) [TD 75–160.]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the Commissioner of Customs accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $80, which covers all copyrights included in the application which have been previously recorded with the U.S. Customs Service. A check or money order shall be made payable to the U.S. Customs Service. (Sec. 501, 65 Stat. 290; 31 U.S.C. 483a) [TD 75–160.]

§ 133.37 Renewal of copyright recordation.

(a) *Term of renewal.* If a recorded copyright has a term which exceeds the original 20-year recordation, continued Customs protection may be obtained by renewing the recordation. The renewed recordation shall remain in effect for 20 years, unless the recordant's copyright ownership expires sooner, in which case it shall remain in effect until the ownership expires. There is no limit to the number of times recordation of a subsisting copyright may be renewed.

(b) *Application for renewal.* An application to renew recordation shall be made no later than 3 months before the date the recordation then in effect expires. The application shall be in writing addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, DC 20229.

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of $80. A check or money order shall be made payable to the U.S. Customs Service.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The

recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

Subpart E—Importations Violating Copyright Laws

§ 133.41 Reserved [TD 87-40.]

§ 133.42 Infringing copies or phonorecords.

(a) *Definition:* Infringing copies or phonorecords are "piratical" articles, i.e., copies or phonorecords which are unlawfully made (without the authorization of the copyright owner).

(b) *Importation prohibited.* The importation of infringing copies or phonorecords of works copyrighted in the U.S. is prohibited by Customs. The importation of lawfully made copies is not a Customs violation.

(c) *Seizure and forfeiture.* The district director shall seize any imported article which he determines is an infringing copy or phonorecord of a copyrighted work protected by Customs. The district director also shall seize an imported article if the importer does not deny a representation that the article is an infringing copy or phonorecord as provided in § 133.43(a). In either case, the district director also shall institute forfeiture proceedings in accordance with Part 162 of this chapter, unless the article may be returned to the country of export as provided in § 133.47. Lawfully made copies are not subject to seizure and forfeiture by Customs.

(d) *Referral to the U.S. Attorney.* In the event that phonorecords or copies of motion pictures arrive in the U.S. bearing counterfeit labels, Customs officers should consider referring the violation to the U.S. Attorney, Department of Justice, for possible criminal prosecution pursuant to the "Piracy and Counterfeiting Amendments Act of 1982" (18 U.S.C. 2318). This law provides a minimum fine of $25,000 or imprisonment for not more than one year, or both, for willful infringement of a copyright for commercial advantage, and a maximum fine of $250,000 or imprisonment for not more than 5 years, or both, where trafficking in counterfeit labels for phonorecords or copies of motion pictures or other audiovisual works is involved. **[TD 87-40.]**

§ 133.43 Procedure on suspicion of infringing copies.

(a) *Notice to the importer.* If the district director has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The district director also shall advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes an infringing copy or phonorecord, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner.* If the importer of suspected infringing copies of phonorecords files a denial as provided in paragaph (a) of this section, the district director shall furnish the copyright owner with a sample of the imported article, together with notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the district director:

(1) A written demand for the exclusion from entry of the detained imported articles; and

(2) A bond, in the form and amount specified by the district director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner of Customs or his designee determines that the article is not an infringing copy prohibited importation under § 602 of the Copyright Act of 1976 (17 U.S.C. 602) (See Part 113 of this chapter).

(c) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected of being infringing copies of his recorded copyrighted work, the district director shall proceed in accordance with the following procedures:

(1) *Demand and bond.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the district director shall promptly notify the importer and the copyright owner that, during a specified time limited to not more than 30 days, they must submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy. At the close of the period specified for submission of evidence, the district director shall forward the entire file, together with a sample of the imported articles, and his views or comments, to the Commissioner of Customs or his designee, for decision on the disputed claim of infringement.

(2) *Infringement disclaimed or unsupported.* If the copyright owner disclaims that the specified imported article is an infringing copy of his recorded copyrighted work, or fails to present sufficient evidence of proof to substantiate a claim of infringement, the district director shall release the detained shipment to the importer and all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer and notify the copyright owner of the release.

(4) *Withdrawal of bond.* At any time before transmittal of the case to the Commissioner of Customs or his designee for decision, the copyright owner may withdraw a bond filed in accordance with paragraph (b) of this section. Before returning the bond to the copyright owner and release of the detained articles, the district director shall require the copyright owner and the importer to file written statements agreeing to hold Customs and the district director harmless for any consequence of the return of the bond and release of the detained articles. After the withdrawal of a bond, the district director shall release importations of the same article by the same importer without further notice to the copyright owner.

(d) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs,

Attention: Office of the Chief Counsel, Washington, D.C. 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the $190 fee required by § 133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8" X 10½" in size. **[TDs 84–213, 87.40.]**

§ 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is an infringing copy, the district director shall seize the imported article and either institute forfeiture proceedings in accordance with Part 162 of this chapter or, if the conditions prescribed by § 133.47 are met, permit the importer to return the article to the country of export, in either event, the bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not an infringing copy, the district director shall release all detained merchandise and transmit the copyright owner's bond to the importer. **[TD 87–40.]**

§ 133.45 Reserved [TD 87–40.]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the district director at the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter. **[TDs 73–175, 74–227, 84–213.]**

§ 133.47 Return of seized or detained articles to country of export.

Articles seized or detained for violations or suspected violations of the Copyright Act of 1976 may be returned to the country of export whenever it is shown to the satisfaction of the district director that the importer had no reasonable grounds for believing that his actions constituted a violation of the Act. If the district director is in doubt as to whether the articles should be returned, the matter may be forwarded to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, DC 20229, for decision. **[TD 87–40.]**

Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with Parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority: **[TD 79–159.]**

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles:

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the "American manufacturing clause" of the Copyright Act of 1976 (17 U.S.C. 602,603).

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* The Commissioner of Customs or his designee shall dispose of forfeited articles bearing a counterfeit trademark after obliteration of the trademark, where feasible, in the following manner:

(1) *Government use.* By delivery to any Federal, State, or local government agency which, in the opinion of the Commissioner or his designee, has established a need for the article.

(2) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the article.

(3) *Sale.* If more than 1 year has passed since the forfeiture, the article may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall determine that a need for the article has not been established by any eligible government organization or charitable institution under paragraph (c)(1) or (c)(2) of this section.

(4) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed. (Sec. 42, 60 Stat. 440, sec. 108, 61 Stat. 664, 15 U.S.C. 1124, 17 U.S.C. 108). **[TD 79–159.]**

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation

and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter. (Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a)) [TD 73-175.]

PART 134—COUNTRY OF ORIGIN MARKING

Sec.

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, HTSUS), 1304, 1624.

Source: T.D. 72-262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

§ 134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of § 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are also set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in § 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere. **[TDs 72-262, 81-290, 89-1.]**

Subpart A—General Provisions

§ 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country.* "Country" means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin.* "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part.

(c) *Foreign origin.* "Foreign origin" refers to a country of origin other than the U.S., as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser.* The "ultimate purchaser" is generally the last person in the U.S. who will receive the article in the form in which it was imported. It is not feasible to state who will be the "ultimate purchaser" in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser."

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser."

(4) If the imported article is distributed as a gift the recipient is the "ultimate purchaser."

(e) *U.S.* "U.S." includes all territories and possessions of the U.S., except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the U.S.* "Customs territory of the U.S.," as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry, as provided in paragraph (c) of § 304, Tariff Act of 1930, as amended (19

U.S.C. 1304(c)). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

§ 134.3 Delivery withheld until marked and redelivery order.

(a) Any imported article (or its container) held in Customs custody for inspection, examination or appraisement shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(c), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The district director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked, a demand for redelivery shall be made, as required under §141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(1) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the district director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law. [TD 80–88.]

§ 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this part in order to conceal this information may result in criminal penalties of up to $5,000 and/or imprisonment for 1 year, as provided in § 304(e), Tariff Act of 1930, as amended (19 U.S.C. 1304(e)).

Subpart B—Articles Subject to Marking

§ 134.11 Country of origin marking required.

Unless excepted by law, § 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, at the time of importation into the Customs territory of the U.S. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

§ 134.12 Foreign articles reshipped from a U.S. possession.

Articles of foreign origin imported into any possession of the U.S. outside its Customs territory and reshipped to the U.S. are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the U.S.

§ 134.13 Imported articles repacked or manipulated.

(a) *Marking requirement.* An article within the provisions of this section shall be marked with the name of the country of origin at the time the article is withdrawn for consumption unless the article and its container are exempted from marking under provisions of Subpart D of this part at the time of importation.

(b) *Applicability.* The provisions of this section are applicable to the following articles:

(1) Articles repacked in a bonded warehouse under § 19.8 of this chapter;

(2) Articles manipulated under § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter;

(3) Articles manipulated, but not manufactured, in a foreign-trade zone under § 146.32 of this chapter.

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.* When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation.

(b) *Example.* Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar meaning. See Subpart C of this part for marking of bottles, drums, or other containers.

(c) *Applicability.* This section shall not apply to articles of a kind which are ordinarily so substantially changed in the U.S. that the articles in their changed condition become products of the U.S. An article excepted from marking under Subpart D of this part is not within the scope of § 304(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(2)), and is not subject to the requirements of this section.

Subpart C—Marking of Containers or Holders

§ 134.21 Special marking.

This subpart includes only country of origin marking requirements and exceptions under § 304(b), Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), for containers or holders. Special marking may be required by the Internal Revenue Service on alcoholic beverage bottles and other requirements may be imposed by reason of the nature of the contents by other Government agencies.

§ 134.22 General rules for marking of containers or holders.

(a) *Contents excepted from marking.* When an article is excepted from the marking requirements by Subpart D of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be

marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin.

(b) *Containers or holders treated as imported articles.* Containers or holders for imported merchandise subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

(c) *Containers or holders bearing a U.S. address.* Containers or holders of imported merchandise bearing the name and address of an importer, distributor, or other person or company in the U.S. shall be marked in close proximity to the U.S. address to indicate clearly the country of origin of the contents with a marking such as "Contents made in France" or "Contents Product of Spain."

(d) *Exceptions.* Containers or holders of imported articles are not required to be marked if:

(1) *Excepted articles.* They are containers or holders of articles within the exceptions set forth in paragraph (f), (g), or (h) in § 134.32.

(2) *Excepted containers or holders.* The container or holder itself is within an exception set forth in Subpart D of this part.

(3) *To be filled by the importer.* The container or holder is within the exception set forth in § 134.24(c). [TD 89–1.]

§ 134.23 Containers or holders designed for or capable of reuse.

(a) *Usual and ordinary reusable containers or holders.* Containers or holders designed for or capable of reuse after the contents have been consumed, whether imported full or empty, must be individually marked to indicate the country of their own origin with a marking such as, "Container Made in (name of country)." Examples of the containers or holders contemplated are heavy duty steel drums, tanks, and other similar shipping, storage, transportation containers or holders capable of reuse. These containers or holders are subject to the treatment specified in General Rule of Interpretation 5(b), HTSUS (19 U.S.C. 1202).

(b) *Other reusable containers or holders.* Containers or holders which give the whole importation its essential character, as described in General Rule of Interpretation 5(a) (19 U.S.C. 1202), must be individually marked to clearly indicate their own origin with a marking such as, "Container made in (name of country)." Examples of the containers contemplated are mustard jars reusable as beer mugs; shaving soap containers reusable as shaving mugs; fancy cologne bottles reusable as flower vases, and other containers which have a lasting value or decorative use. [TD 89–1.]

§ 134.24 Containers or holders not designed for or capable of reuse.

(a) *Containers ordinarily discarded after use.* Disposable containers or holders subject to the provisions of this section are the usual ordinary types of containers or holders, including cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.

(b) *Imported empty.* Disposable containers or holders imported for distribution or sale are subject to treatment as imported articles in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and shall be marked to indicate clearly the country of their own origin. However, when the containers are packed and sold in multiple units (dozens, gross, etc.), this requirement ordinarily may be met by marking the outermost container which reaches the ultimate purchaser. [TD 89–1.]

(c) *Imported to be filled*—(1) *If unmarked.* When disposable containers or holders are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the "ultimate purchasers" of these containers or holders and they may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin.

(2) *If marked.* If the disposable containers or holders are marked with the country of origin at the time of importation and the marking will be visible after they are filled, the marking shall clearly indicate that the container only and not the contents were made in the named country. For example, bottles, drums, or other containers imported empty, to be filled in the U.S., shall be marked with such words as "Bottle (or container) made in (name of country)."

(d) *Imported full*—(1) *When contents are excepted from marking.* Usual disposable containers in use as such at the time of importation shall not be required to be marked to show the country of their own origin, but shall be marked to indicate the origin of their contents regardless of the fact that the contents are excepted from marking requirements.

(2) *Sealed containers or holders.* Disposable containers or holders of imported merchandise, which are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), shall be marked to indicate the country of origin of their contents.

(3) *Unsealed containers.* Unsealed disposable containers of imported merchandise normally unopened by the ultimate purchaser, may be excepted from marking if the article is so marked that the country of origin is clearly visible without unpacking the container. However, if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked.

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part: or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

Certificate of Marking—Repacked J-list Articles and Articles Incapable of Being Marked.

(Port of entry), _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) dated _____), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

Notice to Subsequent Purchaser or Repacker

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the U.S., the English name of the country of origin of the article.

(e) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1582. **[TD 83–155.]**

§ 134.26 Imported articles repacked or manipulated.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

Certificate of Marking by Importer— Repacked Articles Subject to Marking

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) _____ dated _____), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker. I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

Notice to Subsequent Purchaser or Repacker

These articles are imported. The requirements of 19 U.S.C 1304 and 19 CFR part 134 provide that the articles on their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the U.S., the English name of the country of origin of the article.

(e) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions.* The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the U.S., unless such container bears a U.S. address or other potentially misleading marking. **[TD 84–127.]**

Subpart D—Exceptions to Marking Requirements

§ 134.31 Requirements of other agencies.

Nothing in this subpart shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of any law, such as those of the Federal Trade Commission, Food and Drug Administration, and other agencies.

§ 134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see Subpart C of this part for marking of the containers):

(a) Articles that are incapable of being marked;

(b) Articles that cannot be marked prior to shipment to the U.S. without injury;

(c) Articles that cannot be marked prior to shipment to the U.S. except at an expense economically prohibitive of its importation;

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles; **[TD 74–122.]**

(e) Articles which are crude substances;

(f) Articles imported for use by the importer and not intended for sale in their imported or any other form;

(g) Articles to be processed in the U.S. by the importer or for his account otherwise than for the purpose of concealing the origin of such articles and in such manner that any mark contemplated by this part would necessarily be obliterated, destroyed, or permanently concealed;

(h) Articles for which the ultimate purchaser must necessarily know the country of origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the U.S.;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the U.S.;

(m) Products of the U.S. exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, 145.31 or 145.32 of this chapter; and **[TDs 73–135, 73–175.]**

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law.

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of § 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of Subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment. **[TD 85–123.]**

Articles	*References*
Art, works of.	
Articles classifiable under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States.	T.D.s 66–153, 89–1.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearing, ball, 5/8-inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved.	T.D.s 49750; 50366(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	

Articles	References
Hooks, fish (except snelled fish hooks).	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed.	T.D.s 49750; 50366(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags).	
Rails, joint bars, and tie plates covered by subheading 7302.90.00, Harmonized Tariff Schedule of the United States.	T.D. 89–1.
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States.	T.D.s 66–153, 89–1.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tiles, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets.	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under § 134.32(d) may be authorized in the discretion of the district director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the U.S.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the district director in his discretion upon written application by the importer. **[TD 84–127.]**

§ 134.35 Articles substantially changed by manufacture.

An article used in the U.S. in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of U.S. v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the U.S. who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of § 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

§ 134.36 Inapplicability of exceptions.

(a) *Processed articles capable of marking.* An article which is to be processed in the U.S. by the importer or for his account shall not be considered to be within the specifications of § 304(a)(3)(G), of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(G)), if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing.

(b) *Articles or container bearing misleading markings.* An exception from marking shall not apply to any article or retail container bearing any words, letters, names, or symbols described in § 134.46 or 134.47 which imply that an article was made or produced in a country other than the actual country of origin.

Subpart E—Method and Location of Marking Imported Articles

§ 134.41 Methods and manner of marking.

(a) *Suggested methods of marking.* Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that the marking of the country of origin be legible, indelible, and permanent. Definite methods of marking are prescribed only for articles provided for in § 134.43 and for articles which are the objects of special rulings by the Commissioner of Customs. As a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched; on earthenware or chinaware be glazed on in the process of firing; and on paper articles be imprinted.

(b) *Degree of permanence and visibility.* The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

§ 134.42 Specific method may be required.

Marking merchandise by specific methods, such as die stamping, cast-in-the-mold lettering, etching, or engraving, or cloth labels may be required by the Commissioner of Customs in accordance with § 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)). Notices of such rulings shall be published in the ***Federal Register*** and the ***Customs Bulletin.*** **[TD 74-38.]**

§ 134.43 Methods of marking specific articles.

(a) *Marking previously required by certain provisions of the Tariff Act of 1930.* Articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles. **[TDs 77-236, 89-1.]**

(b) *Watch, clock, and timing apparatus.* The country of origin marking requirements on watches, clocks, and timing apparatus are intensive and require special methods. (See § 11.9 of this chapter and Chapter 91, Additional U.S. Note 4 (19 U.S.C. 1202).) **[TD 89-1.]**

§ 134.44 Location and other acceptable methods of marking.

(a) *Other acceptable methods.* Except for articles classifiable under an item specified in § 134.43 of this part or the subject of a ruling by the Commissioner of Customs, any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable. Such marking must be legible and sufficiently permanent so that it will remain on the article (or its container when the container and not the article is required to be marked) until it reaches the ultimate purchaser unless deliberately removed.

(b) *Articles marked with paper sticker labels.* If paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

(c) *Articles marked with tags.* When tags are used, they must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

§ 134.45 Approved markings of country name.

(a) *English language.* The markings required by this part shall include the English name of the country of origin, unless other marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the English name of the country of origin shall be published in the ***Federal Register*** and the ***Customs Bulletin.***

(b) *Abbreviations and variant spellings.* Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain" or "Luxemb" and "Luxembg" for "Luxembourg" are acceptable. Variant spellings which clearly indicate the English name of the country of origin, such as "Brasil" for "Brazil" and "Italie" for "Italy," are acceptable. **[TD 74-42.]**

Cross Reference: For a ruling on an acceptable variable spelling of "Denmark", see T.D. 74-42, 39 FR 2471, Jan. 22, 1974.

(c) *Adjectival form.* The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as "English walnuts" or "Brazil nuts" are unacceptable.

(d) *Colonies, possessions, or protectorates.* The name of a colony, possession, or protectorate outside the boundaries of the mother country shall usually be considered acceptable marking. When the Commissioner of Customs finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake, clarifying words shall be required. In such cases, the Commissioner of Customs shall specify in decisions published in the ***Federal Register*** and the ***Customs Bulletin*** the additional wording to be used in conjunction with the name of the colony, possession, or protectorate. **[TD 74-208.]**

Cross Reference: For a ruling on products imported from the French islands of Amsterdam, St. Paul and Kerguelen, see T.D. 74-208, 39 FR 27648, July 31, 1974.

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words "U.S.," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the U.S., or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such

words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

§ 134.47 Souvenirs and articles marked with trademarks or trade names.

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the U.S. or "U.S." or "America" appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location.

Subpart F—Articles Found Not Legally Marked

§ 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the district director shall notify the importer on Customs Form 4647 to arrange with the district director's office to properly mark the article or containers, or to return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the district director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs supervision unless the district director accepts a certificate of marking as provided for in § 134.52 in lieu of marking under Customs supervision.

§ 134.52 Certificate of marking.

(a) *Applicability.* District directors may accept certificates of marking supported by samples of articles required to be marked, for which Customs Form 4647 was issued, from importers or from actual owners complying with the provision of § 141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished. **[TD 73-175.]**

(b) *Filing of certificates of marking.* The certificates of marking shall be filed in duplicate with the district director, and a sample of the marked merchandise shall accompany the certificate. The district director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance.* The district director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of acceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The district director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking.* If a false certificate of marking is filed with the district director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of § 1001, title 18, United States Code, which provides for a fine up to $10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the U.S. **[TD 84-18.]**

(e) *Authority to require physical supervision when deemed necessary.* The district director may require physical supervision of marking as specified in § 134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in § 134.55. **[T.D. 72-262,** 37 FR 20318, Sept. 29, 1972, as amended by **T.D. 73-175, 38 FR 17447, July 2, 1973.]**

§ 134.53 Examination packages.

(a) *Site of marking*—(1) *Customs custody.* Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere.* If it is impracticable to mark the articles (or containers) in examination packages as provided in subparagraph (1) of this paragraph, the merchandise may be turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(c) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs supervision. (See § 134.55.) The district director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (c) and (d).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages.* If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with Part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the shipment for marking prior to withdrawal. **[TDs 78-99, 84-213.]**

§ 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the district director may allow for good cause shown, the importer does not properly mark or redeliver the merchandise previously released to him, the district director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered, plus any estimated duty thereon determined at the time of entry. **[TD 79-159.]**

(b) *Failure to petition for relief.* A written petition addressed to the Commissioner of Customs for relief from the

payment of liquidated damages may be filed with the district director in accord with Part 172 of this chapter. If a petition for relief from the payment of liquidated damages is not filed or payment of the liquidated damages is not made within a period of 60 days after the demand for payment, or if the liquidated damages are not paid within 60 days after the denial of the petition for relief, the district director shall in accord with Part 172 of this chapter report the matter to the U.S. attorney for collection.

(c) *Relief from full liquidated damages.* Any relief from the payment of the full liquidated damages incurred will be contingent upon the deposit of the marking duty required by § 304(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), and the satisfaction of the district director that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise. **[TD 83–217.]**

§ 134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged.* The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability*—(1) *Official hours.* The compensation of Customs officers and employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with § 24.17(a)(3) of this chapter when such supervision is performed during a regularly scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with § 24.16 of this chapter.

(c) *Expenses included.* In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.

(d) *Services rendered for more than one importer.* If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

PART 141—ENTRY OF MERCHANDISE

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Authority: R.S. 251, as amended, secs. 448, 484, 624, 46 Stat. 714, as amended, 722, as amended, 759; 19 U.S.C. 66, 1448, 1484, 1624. Subpart B also issued under sec. 483, 46 Stat. 721; 19 U.S.C. 1483. Subpart F also issued under sec. 481, 46 Stat. 719; 19 U.S.C. 1481. Subpart G also issued under sec. 505, 46 Stat. 732, as amended; 19 U.S.C. 1505. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73-175, 38 FR 17447, July 2, 1973, unless otherwise noted.

§ 141.0 Scope.

This part sets forth general requirements and procedures for the entry of imported merchandise, except entries under carnet, and entries for transportation in bond or exportation, for foreign-trade zones, or for trade fairs, which are covered in Parts 114, 18, 146, and 147 of this chapter. More specific requirements and procedures in addition to those in this part are set forth in Parts 143, 144, and 145 of this chapter for consumption, appraisement and informal entries, for warehouse entries, and for mail entries. **[TD 73-175.]**

§ 141.0a Definitions.

Unless the context requires otherwise or a different definition is prescribed, the following terms shall have the meanings indicated when used in connection with the entry of merchandise:

(a) *Entry.*—"Entry" means that documentation required by § 142.3 of this chapter to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation.

(b) *Entry Summary.*—"Entry summary" means any other documentation necessary to enable Customs to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

(c) *Submission.*—"Submission" means the voluntary delivery to the appropriate Customs officer of the entry summary documentation for preliminary review or of entry documentation for other purposes.

(d) *Filing.*—"Filing" means:

(1) The delivery to Customs of the entry documentation required by § 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), to obtain the release of merchandise, or

(2) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation required to assess duties, collect statistics, and determine whether other requirements of law and regulation are met, or

(3) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation which shall serve as both the entry and the entry summary.

(e) *Presentation.* "Presentation" is used only in connection with quota-class merchandise and is defined in § 132.1(d) of this chapter.

(f) *Entered for consumption.*—"Entered for consumption" means that an entry summary for consumption has been filed with Customs in proper form, with estimated duties attached.

(g) *Entered for warehouse.*—"Entered for warehouse" means that an entry summary for warehouse has been filed with Customs in proper form.

(h) *Entered temporarily under bond.*—"Entered temporarily under bond" means that an entry summary supporting a temporary importation under bond has been filed with Customs in proper form.

(i) *Released conditionally.*—"Released conditionally" means any release from Customs custody before liquidation. **[TD 84-213.]**

Subpart A—Liability for Duties and Requirement To Enter Merchandise

§ 141.1 Liability of importer for duties.

(a) *Time duties accrue.* Duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade, or at the time of arrival within the Customs territory of the U.S. if the merchandise arrives otherwise than by vessel, unless otherwise specially provided for by law.

(b) *Payment of Duties.*—(1) *Personal debt of importer.* The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the U.S. which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation. Payment to a broker covering duties does not relieve the importer of liability if the duties are not paid by the broker. The liability may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without payment. Delivery of a Customs bond with an entry is solely to protect the revenue of the U.S. and does not relieve the importer of liabilities incurred from the importation of merchandise into the U.S.

(2) *Means of Payment.* An importer or his agent may pay Customs by using any of the applicable means provided in § 24.1(a).

(3) *Methods of payment.* An importer may pay duties either—

(i) Directly to Customs whether or not a licensed customhouse broker is used; or

(ii) Through a licensed customhouse broker. When an importer uses a broker and elects to pay by check or bank draft, the importer may issue the broker either—

(A) One check or bank draft payable to the broker covering both duties and the broker's fees and charges, in which case the broker shall pay the duties to Customs on behalf of the importer, or

(B) Separate checks or bank drafts, one covering duties payable to the "U.S. Customs Service," for transmittal by the broker to Customs, and the other covering the broker's fees and charges. The importer's check or bank draft for duties shall be delivered to Customs by the broker. **[TD 82-134.]**

(c) *Prior claim against importer's estate.* The Government's claim for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the U.S.

(d) *Lien against merchandise.* The liability for duties also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the U.S.

(e) *States and their instrumentalities.* Neither the States nor their instrumentalities are entitled to any constitutional exemption from the payment of Customs duties.

(f) *Unordered merchandise.* There shall be no liability for the payment of duties on the part of anyone to whom merchandise is consigned without his authority, if he refuses it. Such merchandise shall be treated as unclaimed (see Part 20 of this chapter). (R.S. 3466, 3467, as amended; 31 U.S.C. 191, 192.)

§ 141.2 Liability for duties on reimportation.

Dutiable merchandise imported and afterwards exported, even though duty thereon may have been paid on the first importation, is liable to duty on every subsequent importation into the Customs territory of the U.S., but this does not apply to the following:

(a) Personal and household effects taken abroad by a resident of the U.S. and brought back on his return to this country (see § 148.31 of this chapter);

(b) Professional books, implements, instruments, and tools of trade, occupation, or employment taken abroad by an individual and brought back on his return to this country (see § 148.53 of this chapter);

(c) Automobiles and other vehicles taken abroad for noncommercial use (see § 148.32 of this chapter);

(d) Metal boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers exported from the U.S. empty and returned as usual containers or coverings of merchandise, or exported filled with products of the U.S. and returned empty or as the usual containers or coverings of merchandise (see § 10.7 (b), (c), (d), and (e) of this chapter);

(e) Articles exported from the U.S. for repairs or alterations, which may be returned upon the payment of duty on the value of repairs or alterations at the rate or rates which would otherwise apply to the articles in their repaired or altered conditions (see § 10.8 of this chapter);

(f) Articles exported for exhibition under certain conditions (see §§ 10.66 and 10.67 of this chapter);

(g) Domestic animals taken abroad for temporary pasturage purposes and returned within 8 months (see § 10.74 of this chapter);

(h) Articles exported under lease to a foreign manufacturer (see § 10.108 of this chapter); or

(i) Any other reimported articles for which free entry is specifically provided.

§ 141.3 Liability for duties includes liability for taxes.

The importer's liability for duties includes a liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation.

§ 141.4 Entry required.

Entry, as required by § 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), shall be made of every importation, whether free or dutiable and regardless of value, except for:

(a) The exemptions listed in General Note 5 to the Harmonized Tariff Schedule of the United States (HTSUS);

(b) Vessels (not including vessels classified in heading 8903 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note; and

(c) Articles specifically exempted by law or regulations from the requirement for entry. (19 U.S.C. 1498). **[TD 89–1.]**

§ 141.5 Time limit for entry.

Merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless a longer time is authorized by law or regulation, or by the district director in writing. Merchandise for which timely entry is not made shall be treated in accordance with § 4.37 and Part 127 of this chapter. (R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).) **[TD 77–12.]**

Subpart B—Right To Make Entry and Declarations on Entry

§ 141.11 Evidence of right to make entry for importations by common carrier.

(a) *Merchandise not released directly to carrier.* Except where merchandise is released directly to the carrier in accordance with paragraph (b) of this section, one of the following types of evidence of the right to make entry shall be filed in connection with the entry of merchandise imported by common carrier:

(1) A bill of lading or air waybill, presented by the holder thereof, properly endorsed when endorsement is required under the law. A nonnegotiable bill of lading, or air waybill, may not be endorsed by the named consignee to give someone else the right to make entry. If the person making entry intends to use the original bill of lading or air waybill to obtain a duplicate bill of lading, duplicate air waybill, or carrier's certificate from the carrier, the exchange shall be made before the entry is filed, and the duplicate bill of lading, duplicate air waybill, or carrier's certificate shall be used to make entry in accordance with subparagraph (3) or (4) of this paragraph. For purposes of this part, the rights of the consignor relating to an air waybill as prescribed by the Warsaw Convention (49 Stat. 3017) shall be protected. **[TD 78–394.]**

(2) An extract from a bill of lading or air waybill certified to be genuine by the carrier bringing the merchandise to the port of entry. District directors shall not certify extracts from bills of lading or air waybills. **[TD 78–394.]**

(3) A certified duplicate bill of lading or air waybill, with the carrier's certificate being in substantially the following form:

Duplicate Bill Of Lading or Air Waybill Certificate

_____, 19__

The undersigned carrier, bringing the within-described merchandise to this port, hereby certifies that this signed copy of the bill of lading or air waybill is genuine and may be used for the purpose of making Customs entry as provided for in § 484(i), Tariff Act of 1930. **[TD 78–394.]**

_____
(Name of carrier)

_____
(Agent)

(4) A carrier's certificate, which may be executed on the official entry form, or, in appropriate cases, by means of a rubber-stamped or typewritten combined carrier's certificate and release order with one signature on a copy of the bill of lading, airway bill, shipping receipt, or other comparable document. The rubber-stamped or typewritten certificate shall be in substantially the following form, which may be varied to include any of the qualifications on release shown in § 141.111(d):

Date _____

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of § 484(h), Tariff Act of 1930. In accordance with the provisions of § 484(j), Tariff Act of 1930, authority is hereby given to release the

articles covered by the aforementioned statement to such consignee.

_____
(Name of carrier)

_____
(Agent)

(5) **[Reserved TD 87-75.]**

(6) A shipping receipt or other document presented in lieu of a bill of lading or air waybill shall be accepted as authority for making entry only if it bears a carrier's certificate in accordance with subparagraph (4) of this paragraph, or if entry is made by the actual consignee in person or in his name by a duly authorized agent. **[TD 78-394.]**

(b) *Merchandise released directly to carrier.*—Where, in accordance with subsection (j) of § 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of Subpart C of Part 142 of this chapter, or after an entry has been filed in accordance with Subpart A of Part 142 of this chapter, or after an entry summary, which shall serve as both the entry and entry summary has been filed with estimated duties attached where appropriate in accordance with Subpart B of this chapter), to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person filing the entry summary with estimated duties attached shall be deemed to be the certification required by subsection (h), § 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to obtain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph. **[TD 82-224.]**

§ 141.12 Right to make entry of importations by other than common carrier.

When merchandise is not imported by a common carrier, possession of the merchandise at the time of arrival in the U.S. shall be deemed sufficient evidence of the right to make entry.

§ 141.13 Right to make entry of abandoned or salvaged merchandise.

Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, air waybill, certified duplicate bill of lading or air waybill, or carrier's certificate, shall produce evidence satisfactory to the district director of their right to act. **[TD 78-394.]**

§ 141.14 Deceased or insolvent consignees and court-appointed administrators.

The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he produces a duly endorsed bill of lading or air waybill, a carrier's certificate, or a duplicate bill of lading or air waybill, executed in accordance with subsection (h) or (i) of § 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), showing him to be the consignee for Customs purposes. **[TD 78-394.]**

§ 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate.* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, the district director may accept a bond for the production of a bill of lading or air waybill under the provisions of § 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because § 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the district director is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading or air waybill, he shall request authority to do so from the Commissioner of Customs. **[TD 78-394.]**

(b) *Form.* The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter. **[TD 84-213.]**

(c) *Documents acceptable to satisfy bond.* A bond given for the production of a bill of lading or air waybill shall be considered as canceled upon production of a bill of lading or air waybill, and may be considered as satisfied but shall not be canceled upon the production of a carrier's certificate or certified duplicate bill of lading or air waybill. **[TD 78-394.]**

§ 141.16 Disposition of documents.

(a) *Bill of lading or air waybill.* When the return of the bill of lading or air waybill to the person making entry is requested in accordance with § 484(j), Tariff Act of 1930, as amended (19 U.S.C. 1484(j)), the district director shall obtain a receipt showing sufficient data from the bill of lading or air waybill to completely identify it and enable the auditor to verify the production of proper evidence of the right to make entry. The receipt shall also show any freight charges and weights that appear on the bill of lading or air waybill. The district director shall then return the bill of lading or air waybill to the person making entry with a notation thereon to the effect that entry has been made for the merchandise. **[TD 78-394.]**

(b) *Other documents.* When any of the other documents specified in §§ 141.11(a) (2) through (6) is used in making entry, it shall be retained by the district director as evidence that the person making entry is authorized to do so.

§ 141.17 Entry by nonresident consignee.

A nonresident consignee has the right to make entry, but any bond taken in connection with the entry shall have a resident corporate surety or, when a carnet issued under Part 114 of this chapter is used as an entry form, an approved resident guaranteeing association.

§ 141.18 Entry by nonresident corporation.

A nonresident corporation (i.e., one which is not incorporated within the Customs territory of the U.S. or in the Virgin Islands of the U.S.) shall not enter merchandise for consumption unless it:

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against such corporation; and

(b) Files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter having a resident corporate surety to secure the payment of any increased and additional duties which may be found due. **[TD 84-213.]**

§ 141.19 Declaration of entry.

(a) *Declaration by consignee.* The consignee in whose name an entry is made under the provisions of § 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), shall execute the declaration specified in § 485(a), Tariff Act of 1930, as amended (19 U.S.C. 1485(a)) on:

(1) The entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, or

(2) The rewarehouse or the bonded manufacturing warehouse entry.

The declaration need not be under oath. * * *

(b) *Declaration by agent of consignee*—(1) *Authorized agent with knowledge of the facts.*—When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee to make declarations in accordance with § 485(f), Tariff Act of 1930, as amended (19 U.S.C. 1485(f)), a declaration on the entry or entry summary executed by that agent is sufficient and no bond to produce a declaration of the consignee is required.

(2) *Other agents.*—When entry is made in a consignee's name by an agent who does not meet the qualifications in paragraph (b)(1) of this section either:

(i) A declaration of the consignee on Customs Form 3347-A shall be filed with the entry documentation or entry summary or

(ii) A charge for the production of the declaration shall be made against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. **[TDs 79-221, 84-213.]**

(3) *Nominal consignee.* A nominal consignee who makes entry in his own name is not considered an agent within the purview of § 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)), and he shall execute a declaration in accordance with paragraph (a) of this section.

(c) *Books, newspapers, and periodicals.* In the case of successive importations of books, magazines, newspapers, and periodicals within the scope of § 485(b), Tariff Act of 1930, as amended (19 U.S.C. 1485(b)), one declaration filed at the time of arrival of the first importation will be sufficient. (Secs. 485, 486, 46 Stat. 724, as amended, 725, as amended; 19 U.S.C. 1485, 1486)

§ 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) *Filing*—(1) *Declaration of owner.*—A consignee in whose name an entry summary for consumption, warehouse, or temporary importation under bond is filed, or in whose name a rewarehouse entry or a manufacturing warehouse entry is made, and who desires, under the provisions of § 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to be relieved from statutory liability for the payment of increased and additional duties shall declare at the time of the filing of the entry summary or entry documentation, as provided in § 141.19(a), that he is not the actual owner of the merchandise, furnish the name and address of the owner, and file with the district director within 90 days from the time of entry (see sec. 141.68) a declaration of the actual owner of the merchandise acknowledging that the actual owner will pay all additional and increased duties. The declaration of owner shall be filed on Customs Form 3347. **[TDs 74-212, 79-221.]**

(2) *Bond of actual owner.*—If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by him under the single-entry bond which he filed in connection with the entry documentation and/or entry summary, or under his continuous bond against which the entry and/or entry summary is charged, he shall file a bond of the actual owner on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with the district director within 90 days from the time of entry. **[TDs 74-212, 79-221, 84-213.]**

(b) *Appropriate party to execute and file.* Neither the declaration of the actual owner nor the bond of the actual owner shall be accepted unless executed by the actual owner or his duly authorized agent, and filed by the nominal consignee or his duly authorized agent. **[TD 74-212.]**

(c) *Nonresident actual owner.* If the actual owner is a nonresident, the actual owner's declaration shall not be accepted as compliance with § 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), unless there is filed therewith the owner's bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with a resident corporate surety.

(d) *Filing of declaration of owner for purposes other than relief from liability.* Nothing in this section shall be construed to prevent the nominal consignee from filing the actual owner's declaration without the superseding bond for purposes other than relief from statutory liability for the payment of increased and additional duties under the provisions of § 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). (Secs. 485, 623, 46 Stat. 724, as amended, 759, as amended; 19 U.S.C. 1485, 1623) **[TDs 74-212, 84-213.]**

Subpart C—Powers of Attorney

§ 141.31 General requirements and definitions.

(a) *Limited or general power of attorney.* A power of attorney may be executed for the transaction by an agent or attorney of a specified part or all the Customs business of the principal.

(b) Removed **[T.D. 84-93.]**

(c) *Minor agents.* A power of attorney to a minor shall not be accepted.

(d) *Definitions of resident and nonresident.* For the purposes of this subpart, "resident" means an individual who resides within, or a partnership one or more of whose partners reside within, the Customs territory of the U.S. or the Virgin Islands of the U.S., or a corporation incorporated in and jurisdiction within the Customs territory of the U.S. or in the Virgin Islands of the U.S. A "nonresident" means an individual, partnership, or corporation not meeting the definition of "resident."

§ 141.32 Form for power of attorney.

Customs Form 5291 may be used for giving power of attorney to transact Customs business. If a Customs power of attorney is not on a Customs Form 5291, it shall be either a general power of attorney with unlimited authority or a limited power of attorney as explicit in its terms and executed in the same manner as a Customs Form 5291. The following is an example of an acceptable general power of attorney with unlimited authority:

KNOW ALL MEN BY THESE PRESENTS, THAT

_____
(Name of principal)

_____
(State legal designation, such as corporation, individual, etc.) residing at _____
and doing business under the laws of the State of _____, hereby appoints

_____
(Name, legal designation, and address)

as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lawful act and thing the said agent and attorney may deem requisite and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that said agent and attorney shall lawfully do or cause to be done by virtue of these presents until and including _____, (date) or until notice of revocation in writing is duly given before that date.

Date _____ _____, 19__

_____
(Principal's signature)

§ 141.33 Alternative form for noncommercial shipment.

An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint another individual as his unpaid agent for Customs purposes by executing a power of attorney applicable to a single noncommercial shipment by writing, printing, or stamping on the invoice, or on a separate paper attached thereto, the following statement:

of _____
(Name)

_____
(Address)

is hereby authorized to execute, as an unpaid agent who has knowledge of the facts, pursuant to the provisions of § 485(f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in § 485 (a) and (d), Tariff Act of 1930, as amended, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning the shipment.

Date _____, 19__

_____
(Signature of importer)

_____
(Address)

§ 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period. [TD 84-93.]

§ 141.35 Revocation of power of attorney.

Any power of attorney shall be subject to revocation at any time by written notice given to and received by the district director.

§ 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident. [TD 84-93.]

§ 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation. [TD 84-93.]

§ 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the district director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so. [TD 84-93.]

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized. [TD 86-204.]

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose. [TD 84-93.]

§ 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

§ 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in Part 113 of this chapter. [TD 74-227.]

§ 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in § 174.3 of this chapter.

§ 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with § 141.36.

(c) *Customs brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in Part 111 of this chapter.

§ 141.44 Designation of Customs districts in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder in all Customs districts, the name of each district in which the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with any district director, in a sufficient number of copies for distribution to each district in which the agent is to act, unless exempted from filing by § 141.46. The district director with whom a power of attorney is filed, irrespective of whether his district is named therein, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other districts to the appropriate districts.

§ 141.45 Certified copies of power of attorney.

When a power of attorney which is not limited to transactions in a specific Customs district has been filed and it is desired to use it in another district, the district director with whom it is filed, upon request of the district director of the other district or upon request of the person or firm which executed the power, shall forward a certified copy thereof to the district director of the second district. Any expense in connection with the preparation of such documents shall be borne by the parties in interest.

§ 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to file the power of attorney with a district director. Customs brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in subpart C of Part 111 of this chapter.

Subpart D—Quantity of Merchandise To Be Included in an Entry

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, except as provided in § 141.52.

§ 141.52 Separate entries for different portions.

If the district director is satisfied that there will be no prejudice to: (i) Import admissibility enforcement efforts, (ii) the revenue, and (iii) the efficient conduct of Customs business, separate entries may be made for different portions of all merchandise arriving on one vessel or vehicle and consigned to one consignee under any of the following circumstances:

(a) Each portion of a consolidated shipment addressed to one consignee for various ultimate consignees may be entered separately under the procedure set forth in § 141.54.

(b) One or more of the enclosed packages in a packaged package may be entered separately under any appropriate form of formal or informal entry. No entry is required for an enclosed package which contains merchandise unconditionally free of duty and not exceeding $250 in value. A packed package is an outer package in which are contained inner packages addressed for delivery to two or more different persons, as described in § 484(f), Tariff Act of 1930, as amended (19 U.S.C. 1484(f)). Each outer container shall be marked to indicate that it is a packed package.

(c) The consignee desires to enter different portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses.

(d) Appraisement is being withheld upon merchandise of the class or kind for which a separate entry is tendered.

(e) The several portions of the consignment for which separate entries are tendered are covered by separate bills of lading.

(f) The consignment consists of different classes of merchandise which are to be processed by different Customs commodity specialist teams.

(g) The consignment contains merchandise subject to entry under a bond given to assure accounting for final disposition, such as a temporary importation under bond.

(h) The consignment consists of different importations which arrived under a consolidated entry for immediate transportation made pursuant to § 18.11(g) of this chapter.

(i) A special application is submitted to the Commissioner of Customs with the recommendation of the district director concerned and is approved by the Commissioner. **[TDs 84–171, 84–213, 85–38.]**

§ 141.53 Procedure for separate entries.

When separate entries for one consignment are made in accordance with § 141.52 (b) through (i), the following procedures shall apply:

(a) The entries shall be presented simultaneously when practicable.

(b) A separate consignee's declaration shall be filed for each entry.

(c) Each entry shall cover whole packages of not less than 1 ton of bulk merchandise, except when a portion of the merchandise is entered under a temporary importation

bond in accordance with Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(d) When separate entries are made for merchandise covered by a single bill of lading or air waybill, the provisions of § 141.54 shall be complied with, except that the endorsement on the bill of lading or air waybill required by § 141.54(b) shall read as follows: **[TDs 78–394, 89–1.]**

As portions of the within-described merchandise will be covered by separate entries, the undersigned consignee expressly waives the right granted by § 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

§ 141.54 Separate entries for consolidated shipments.

When separate entries for consolidated shipments are made in accordance with § 141.52(a), the following procedures shall apply except where the merchandise is released directly to the carrier in accordance with § 141.11(b):

(a) *Deposit of evidence of right to make entry.* The nominal consignee of a consolidated shipment covering merchandise for various ultimate consignees who desire to make separate entries shall deposit with the district director evidence of the right to make entry as set forth in § 141.11(a), and such evidence shall be permanently retained by the district director.

(b) *Waiver of right to have bill of lading or air waybill returned.* If a bill of lading or air waybill is filed, it shall contain the following endorsement signed by the consignee named therein: **[TD 78–394.]**

As the within-described merchandise belongs to various ultimate consignees who desire ake separate entries therefor, the undersigned consignee thereof hereby expressly waives the right granted by § 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

(c) *Certificate by nominal consignee.* Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided, at the time of depositing the bill of lading, air waybill, or other document, the named consignee shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The authority to make entry carried by such a certificate may be transferred by endorsement. The certificate shall be in the following form: **[TD 78–394.]**

Port of _____
_____, 19__

Authority To Make Entry

Of merchandise imported at _____ on _____, 19__, per _____, from _____ shipped by _____, consigned to _____, endorsed to _____, covered by[1] _____ dated _____, 19__, at _____ on file with the district director of Customs at _____.

Marks	*Numbers*	*Description*

[1] Insert "bill of lading," "air waybill," "certified duplicate bill of lading," "certified duplicate air waybill," "carrier's certificate," or "shipping receipt."

(We) (I) _____, the consignee(s) in the above-mentioned document covering merchandise for various ultimate consignees, hereby authorize _____ or order to make Customs entry for the above described merchandise.

_____
(Consignee(s))

(d) *Verification of certificate.* When a certificate on a separate document as described in paragraph (c) of this section is presented, it shall be compared with the supporting document and after being initialed by the ministerial clerk shall be returned to the consignee for transmittal to the person who will make entry. When an entry is received having executed in the space provided thereon an authority to make entry for a portion of a consolidated shipment, such authority shall be compared with the supporting document.

§ 141.55 Single entry for shipments arriving under one transportation entry.

Except in the case of merchandise subject to a quantitative or tariff-rate quota, district directors are authorized to accept one entry summary for consumption or for warehouse for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of the merchandise at the port of destination or at a place of deposit outside the port as may be authorized in accordance with § 18.11(c) of this chapter. **[TD 79–221.]**

§ 141.56 Single entry summary for multiple transportation entries consigned to the same consignee.

(a) *Requirement.*—District directors may accept one entry summary for consumption or for warehouse for merchandise covered by multiple entries for immediate transportation, subject to the requirements of § 142.17(a) of this chapter, provided the merchandise covered by each immediate transportation entry is released at the port of destination under a separate entry, in accordance with § 142.3 of this chapter.

(b) *Limitation.*—A single entry summary for multiple transportation entries shall not be accepted for any merchandise listed in § 142.17(b) of this chapter.

(c) *Information on the entry summary.*—Each entry for immediate transportation shall be identified separately on the entry summary by the immediate transportation entry number and the corresponding entry number.

Subpart E—Presentation of Entry Papers

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation.*—(1) Entry and entry summary documentation shall be prepared on a typewriter, or with ink, indelible pencil, or other permanent medium. The entry summary shall be signed by the importer (see sec. 101.1(k)). Entries, entry summaries, and accompanying documentation shall be on the appropriate forms specified by the regulations and shall set forth clearly all required information. All copies shall be legible.

(2) An importer may omit from the warehouse withdrawal for consumption. Customs Form 7505, or entry summary, Customs Form 7501, the marks and numbers previously provided for packages released or withdrawn. **[TDs 79–221, 84–129, 87–75.]**

(b) *"Signing of the entry".*—The signing of the consignee's declaration on the entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, in accordance with § 141.19, shall be regarded as the "signing of the entry" required by § 484(d), Tariff Act of 1930, as amended (19 U.S.C. 1484(d)). For a rewarehouse or a bonded manufacturing warehouse entry, the signing of the consignee's declaration on the entry documentation shall satisfy 19 U.S.C. 1484(d). **[TD 79-221.]**

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order.* The entry summary filed for merchandise subject to an antidumping or countervailing duty order shalls include the unique identifying number assigned by the Department of Commerce,International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number shall be rejected. **[TD 84-192.]**

(d) *Importer number.* The importer number shall be reported on Customs Form 7501 as follows:

(1) *Generally.* Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and the consignee number of the ultimate consignee shall be reported for each entry summary and for each drawback entry. When the importer of record and the ultimate consignee are the same, the importer number may be entered in both spaces provided on Customs Form 7501 (boxes 10 and 12) or the importer number may be entered in the space provided for the importer (box 12) and the word "SAME" may be entered in the space provided for the ultimate consignee (box 10).

(2) *Exception.* In the case of a consolidated entry summary covering the merchandise of more than one ultimate consignee, the importer number shall be reported on Customs Form 7501 (box 12) and the notation "CONSOLIDATED" shall be made in the space provided for the consignee number (box 10).

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent.* If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number shall be reported on Customs Form 7501 in the box designated "Reference No" (box 22). In this case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(4) *Broker No.* If a broker is used, the broker's number shall be reported in the appropriate location on Customs Form 7501. **[TD 84-129.]**

(e) *Statistical information.*—(1) *Information required on entry summary or withdrawal form.*—(i) *Where form provides space.*—(A) *Single invoice.* For each class or kind of merchandise subject to separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States, shall be shown on the entry summary, Customs Form 7501; the transportation entry and manifest of goods, Customs Form 7512, when used to document an incoming vessel shipment proceeding to a third country by means of an entry for transportation and exportation, or immediate exportation; the withdrawal form, Customs Form 7505 or 7506, in the space provided. **[TDs 84-129, 87-75, 89-1.]**

(B) *Multiple invoices.* If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the importer may, at his option (1) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject to a separate statistical reporting number, report the applicable information required by the General Statistical Notes, HTSUS; or (2) combine the information for each class or kind of merchandise and report it under one statistical reporting number for all invoices. When consolidating information from several invoices under one reporting number, a work sheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(2)(ii) of this section shall be attached to the appropriate form. **[TDs 73-312, 79-221, 81-260, 89-1.]**

(ii) *Where form does not provide space.*—In addition to the information required by paragraph (e)(1)(i) of this section, statistical information for which spaces are not provided on the appropriate form, shall be shown as follows:

(A) The name, the abbreviated designation or four digit code of the country of registry (flag) of the vessel expressed in terms of annex B, HTSUS, shall be placed in the block on the entry document for the name of the importing vessel or carrier.

(B) The notation "Y" or "N" as appropriate, shall be placed in column 33 of Customs Form 7501, and at the top of columns 3, 4, and 5 of Customs Forms 7505 and 7506, and in the top right hand portion of Customs Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner, or as one between a buyer and a seller who are not so related.

(C) The charges (aggregate cost of freight, insurance and all other charges), shall be listed on Customs Form 7501 in column 33. The charges shall be listed on Customs Forms 7505 and 7506 in column 4 immediately below the HTSUS reporting numbers. The charges shall be listed on Customs Form 7519 in the rate column. **[TDs 84-129, 89-1.]**

(e)(2) *Responsibility.*—The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section. If the information required by General Statistical Note 1(a)(XIV)–(XVII), HTSUS, cannot be obtained readily, the person filing the form shall provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from obtaining the necessary information for similar future transactions. The district director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer shall give an appropriate bond for the production of the required documentation, as follows:

(i) Except for merchandise entered for warehouse, the documentation shall be produced within 50 days after the entry summary (or the entry, if there is no entry summary) is required to be filed.

(ii) If merchandise is entered for warehouse, the documentation shall be produced within 2 months after the date of withdrawal, except that if an invoice is part of the documentation, the invoice shall be produced within 50 days after the entry summary for warehouse is required to be filed.

The district director may grant a reasonable extension of time to produce the required documentation for good cause shown. (See sec. 141.91(d) for bond requirements relating to failure to produce an invoice.)

(3) *Estimates of statistical information.*—When the person filing the form estimates any of the values or charges, as provided for in General Statistical Note 1(b)(V), HTSUS, except Canadian rail and truck charges, he shall place either "(estimate)", "(est)", or ("E") after the amount of each value or charge.

(4) *Rejection of form.*—The district director shall reject a form for failure to provide required statistical information if the information is omitted or if the information provided clearly appears on its face, or is known to the Customs officer, to be erroneous.

(5) *Penalty procedures: when not invoked.*—Penalty procedures relating to erroneous statistical information shall not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Note, HTSUS. **[TDs 79–221, 89–1.]**

(f) *Value of each invoice.*—(1) *Single invoice.*—If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers a single invoice, the invoice information shall be restated to show:

(i) Gross amount of the invoice;

(ii) Deduction of the aggregate amount of any nondutiable charges involved in the amount;

(iii) Further deduction of the aggregate of any deductions from the invoice values to make entered values; and

(iv) Addition to the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to the invoice values to make entered values. The final amount in the summary computations shall represent the aggregate of the entered values of all the merchandise covered by the invoice. The required information shall be shown on a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501 and in the same general location on Customs Forms 7505, 7506. **[TDs 75–307, 79–221, 84–129, 87–75.]**

(2) *Multiple invoices.* (i) If the importer or his agent elects the first option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The required information shall be shown on a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501 and in the same general location as Customs Forms 7505, 7506. **[TDs 84–129, 87–75.]**

(ii) If the importer or his agent elects the second option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The final amount in the summary computation shall represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information shall be shown on an attached worksheet.

(iii) The worksheet also shall contain:

(A) A statistical reporting number restatement for the merchandise from each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered values.

(iv) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise from one country reported under a single statistical reporting number shall be coded identically on each invoice and on the worksheet. **[TDs 79–221, 81–260.]**

§ 141.62 Place and time of filing.

(a) *Place.*—An application for immediate delivery and entry, entry summary, or withdrawal documentation shall be filed at the customhouse or at any other Customs location approved by the district director in the district where the merchandise is to be or has been released. **[TDs 77–241, 79–221.]**

(b) *Time.*

(1) *Normal business hours.*

(i) Except as provided in paragraph (b)(2) of this section, an application for immediate delivery or entry documentation shall be filed when the customhouse is open for the general transaction of business, or when Customs has established a regular tour of duty in accordance with § 101.6(f) of this chapter.

(ii) Except as provided in paragraph (b)(2) of this section, entry summary or withdrawal documentation shall be filed when the customhouse is open for the general transaction of business, as provided in § 101.6 of this chapter.

(2) *Overtime services.*

(i) *Generally.*—Except as provided in paragraph (b)(2)(ii) of this section, an application for immediate delivery or entry documentation may be filed when the customhouse is not open for the general transaction of Customs business and no regular tour of duty has been established; and entry summary or withdrawal documentation may be filed when the customhouse is not open for the general transaction of business, if—

(A) The person desiring to transact business has applied for and received authorization for overtime services on a reimbursable basis, as provided for in § 24.16 of this chapter, and

(B) Overtime services of Customs officers are available.

(ii) *Quota-class merchandise.*—Overtime shall not be authorized for the presentation of entry summary documentation which serves as both the entry and entry summary or withdrawal documentation, for quota-class merchandise without headquarters authorization. If headquarters authorization is granted, the time of delivery of the entry summary or withdrawal documentation, with the estimated duties attached, shall be the time of presentation for quota purposes. However, if an entry summary or withdrawal for quota-class merchandise is delivered inadvertently during overtime hours without headquarters authorization, the time of presentation for quota purposes shall be the opening of business on the next business day. **[TD 79–221.]**

§ 141.63 Submission of entry summary documentation for preliminary review.

(a) *Before arrival of merchandise.*—Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time before arrival of the merchandise as may be fixed by the district director—

(1) If the entry summary documentation will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b) of this chapter, or

(2) In the case of quota-class merchandise, if the entry summary for consumption will be presented at time of entry, as provided in § 132.11a of this chapter.

Estimated duties shall not be accepted before arrival of the merchandise within the port limits.

(b) *After arrival of merchandise.*—Entry summary documentation may be submitted at the customhouse for preliminary review without estimated duties attached, within such time after arrival of quota-class merchandise as may be fixed by the district director, if the entry summary for consumption will be presented at the opening of the quota period, as provided in § 132.12(a) of this chapter. Estimated duties shall not be accepted before the opening of the quota period. [TD 79–221.]

(c) *For merchandise entered other than at port of arrival.*—If merchandise is to arrive or has arrived at one port and the importer wishes to file his entry documentation at another port to which the merchandise is destined, he may do so upon approval of the district director at the port of destination. The district director at the destination port may then authorize release of merchandise, after its importation at the port of arrival, or postpone its release if he believes it is necessary for examination or other purposes. [TD 87–78.]

§ 141.64 Review and correction of entry and entry summary documentation.

Entry and entry summary documentation shall be reviewed before acceptance to ensure that all entry and statistical requirements are complied with and that the indicated values and rates of duty appear to be correct. If any errors are found, the entry and the entry summary documentation shall not be considered to have been filed in proper form and shall be returned to the importer for correction. [TD 79–221.]

§ 141.65 [Reserved.] [TD 79–221.]

§ 141.66 Bond for missing documents.

Unless otherwise prescribed in these regulations, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 or § 113.69 of this chapter, as appropriate, may be given for the production of any required document which is not available at the time of entry. (See § 141.91 for the procedure applicable to incomplete or missing invoices.) (Secs. 490, 623, 46 Stat. 726, as amended, 759, as amended; 19 U.S.C. 1490, 1623) [TD 84–213.]

§ 141.67 Recall of documentation.

The importer may recall the entry and entry summary documentation at any time before the effective time of entry set forth in § 141.68. The entry shall be considered canceled, and documents shall be returned to the importer. [TD 79–221.]

§ 141.68 Time of entry.

(a) *When entry documentation is filed without entry summary.*—When the entry documentation is filed in proper form without an entry summary, the "time of entry" shall be:

(1) The time the appropriate Customs officer authorizes the release of the merchandise or any part of the merchandise covered by the entry documentation, or

(2) The time the entry documentation is filed, if requested by the importer on the entry documentation at the time of filing, and the merchandise already has arrived within the port limits, or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

(b) *When entry summary serves as entry and entry summary.*—When an entry summary serves as both the entry documentation and entry summary, in accordance with § 142.3(b) of this chapter, the time of entry shall be the time the entry summary is filed in proper form with estimated duties attached.

(c) *When merchandise is released under the immediate delivery procedure.*—The time of entry of merchandise released under the immediate delivery procedure shall be the time the entry summary is filed in proper form, with estimated duties attached.

(d) *Quota-class merchandise.*—The time of entry for quota-class merchandise shall be the time of presentation of the entry summary or withdrawal for consumption in proper form, with estimated duties attached, as provided in § 132.11a of this chapter.

(e) *When merchandise has not arrived.*—Merchandise shall not be authorized for release, nor shall an entry or an entry summary which serves as both the entry and entry summary be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade.

(f) *Informal mail entry.*—The time of entry of merchandise under an informal mail entry, Customs Form 3419 or 5110–A, is the time the preparation of the entry documentation by a Customs employee is completed.

(g) *Withdrawal from warehouse for consumption.*—The time of entry of merchandise withdrawn from warehouse for consumption (the process preparatory to the issuance of a permit for the release of the merchandise to or upon the order of the warehouse proprietor) is when:

(1) Customs Form 7505 is executed in proper form and filed together with any related documentation required by these regulations to be filed at the time of withdrawal, and

(2) Estimated duties, if any, required to be paid at the time of withdrawal have been deposited.

Unless the requirements of this paragraph and § 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)), including the deposit of estimated duties, if any, are completed within 60 days from the date of presentation of Customs Form 7505, the request for withdrawal shall be considered abandoned.

(h) *Appraisement entry, informal entry, combined entry for rewarehouse and withdrawal for consumption, and entry under carnet.*—The time of entry of merchandise under an appraisement entry or informal entry, Customs Form 7501, an informal entry, Customs Form 5119–A (serially numbered) (or other form prescribed in § 143.23 or elsewhere in the chapter for use as an informal entry), a combined entry for rewarehouse and withdrawal for consumption, Customs Form 7519, or an A.T.A. carnet issued under part 114 of this chapter, shall be the time the specified form is executed in proper form and filed, together with any related documents required by these regulations, and estimated duties, if any, have been deposited. If merchandise eligible

for informal entry is released under a special permit for immediate delivery and Customs Form 5119–A (serially numbered) or 7501 is filed in accordance with § 142.23 of this chapter, the time of entry shall be the time Customs Form 5119–A (serially numbered) or 7501 is filed in proper form, together with any related documents required by this chapter, and estimated duties, if any, have been deposited. However, if merchandise eligible for informal entry is released under the entry documentation set forth in § 142.3(a) of this chapter and Customs Form 5119–A (serially numbered) or 7501 is filed in accordance with § 142.23, the time of entry shall be in accordance with paragraph (a) of this section. (Sec. 315, 46 Stat. 695 as amended; 19 U.S.C. 1315) **[TDs 79–221, 84–129, 87–75.]**

§ 141.69 Applicable rates of duty.

The rates of duty applicable to merchandise shall be the rates in effect at time of entry, as specified in § 141.68, except as otherwise specifically provided for by Executive Order, and in the following cases:

(a) *Warehouse entries.*—Merchandise entered for warehouse is dutiable at the rates in effect at the time withdrawal from warehouse for consumption is made in accordance with § 141.68(f). **[TD 79–221.]**

(b) *Merchandise entered for immediate transportation.*—Merchandise which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation, if entered for consumption at the port designated by the consignee or his agent in such transportation entry without having been taken into custody by the district director for general order under § 490, Tariff Act of 1930, as amended (19 U.S.C. 1490), shall be subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation.

(c) *Overcarried merchandise returned to port of entry.*—If merchandise which has been entered for consumption, but not yet released from Customs custody, is removed from the port or place of intended release because of overcarriage, inaccessibility, strike, act of God, or unforeseen contingency, and is returned to such port or place within 90 days after removal, such merchandise shall be subject to the rates in effect at the time of the original entry, provided the merchandise is identified with the original entry by the usual Customs examination and by any documentary evidence as to its movement between its removal and return which the district director may reasonably require. A new entry shall be required, unless the original entry has not been liquidated and the consignee at the time of original importation and at the time of return is the same person. (Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315)

Subpart F—Invoices

§ 141.81 Invoice for each shipment.

A special summary invoice, or a commercial invoice shall be presented for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in these regulations. Except in the case of installment shipments provided for in § 141.82, an invoice shall not represent more than one distinct shipment of merchandise by one consignor to one consignee by one vessel or conveyance. **[TDs 78–53, 79–221, 85–39.]**

§ 141.82 Invoice for installment shipments arriving within a period of 10 days.

(a) *One invoice sufficient.*—Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period of not to exceed 10 consecutive days. **[TD 75–27.]**

(b) *Preparation of invoice.*—The invoice shall be prepared in the manner provided for in this subpart and, when practicable, shall show the quantities, values, and other invoice data with respect to each installment, the date of shipment of each installment, and the car number or other identification of the importing conveyance in which it was shipped.

(c) *Pro forma invoice.*—If the required invoice is not filed with the first entry of an installment series, a pro forma invoice shall be filed with each entry made before the required invoice is produced, and in accordance with § 141.91 a bond shall be given, or charge against a continuous bond made, for the production of the required invoice. Liquidated damages will accrue in the case of each entry if more than 6 months expire without the production of an invoice for such entry.

(d) *Informal entry.*—Any bona fide installment valued at not over $1,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII. Chapter 94; and Chapter 99, Subchapters III and IV, HTSUS, may be entered on an informal entry in accordance with subpart C of Part 143 of this chapter, in which case such installment need not be considered in connection with invoice requirements for the balance of the series.

(e) *Special summary invoice.*—The provisions of this section shall not apply if a special summary invoice is required by § 141.83(b). **[TDs 78–53, 85–123, 88–79.]**

§ 141.83 Type of invoice required.

(a) Reserved **[TD 85–39.]**

(b) *Special summary invoice.*—A special summary invoice shall be presented for each shipment of merchandise described in § 141.89(b). **[TDs 78–53, 85–39.]**

(c) *Commercial invoice.*—(1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. The commercial invoice shall be prepared in the manner customary in the trade, contain the information required by §§ 141.86 through 141.89, and substantiate the statistical information required by sec. 141.61(e) to be given on the entry, entry summary, or withdrawal documentation.

(2) The district director may accept a copy of a required commercial invoice in place of the original. A copy, other than a photostatic or photography copy, shall contain a declaration by the foreign seller, the shipper or the importer that it is a true copy. **[TDs 78–53, 79–221, 85–39.]**

(d) *Commercial invoice not required.*—A commercial invoice shall not be required in connection with the filing of the entry, entry summary, or withdrawal documentation for merchandise listed in this paragraph. The importer, however, shall present any invoice, memorandum invoice or bill pertaining to the merchandise which may be in his possession or available to him. If no invoice or bill is available, a pro forma (or substitute) invoice, as provided for in

§ 141.85, shall be filed, and shall contain information adequate for the examination of merchandise and the determination of duties, and information and documentation which verify the information required for statistical purposes by § 141.61(e). The merchandise subject to the foregoing requirements is as follows: **[TDs 78–53, 79–221, 85–39.]**

(1) Merchandise having an aggregate purchase price or value, as specified in paragraph (a) of this section, of $500 or less.

(2) Merchandise not intended for sale or any commercial use in its imported condition or any other form, and not brought in on commission for any person other than the importer.

(3) [Reserved.]

(4) [Reserved.]

(5) Merchandise returned to the U.S. after having been exported for repairs or alteration under subheadings 9802.00.40 and 9802.00.60, HTSUS (19 U.S.C. 1202). **[TD 88–79.]**

(6) Merchandise shipped abroad, not delivered to the consignee, and returned to the U.S.

(7) Merchandise exported from continuous Customs custody within 6 months after the date of entry.

(8) Merchandise consigned to, or entered in the name of, any agency of the U.S. Government.

(9) Merchandise for which an appraisement entry is accepted.

(10) Merchandise entered temporarily into the Customs territory of the U.S. under bond or for permanent exhibition under bond.

(11) Merchandise provided for in § 465 or 466, Tariff Act of 1930 (19 U.S.C. 1465 or 1466), which pertain to certain equipment, repair parts, and supplies for vessels.

(12) Merchandise imported as supplies, stores, and equipment of the importing carrier and subsequently made subject to entry pursuant to § 446, Tariff Act of 1930, as amended (19 U.S.C. 1446).

(13) Ballast (not including cargo used for ballast) landed from a vessel and delivered for consumption.

(14) Merchandise, whether privileged or nonprivileged, resulting from manipulation or manufacture in a foreign trade zone.

(15) Screenings contained in bulk importations of grain or seeds. **[TD 84–213.]**

§ 141.84 Photocopies of invoice for separate entries of same shipment.

(a) *Entries at one port.*—If by reason of accident or short shipment a portion of the quantity covered by one invoice fails to arrive, or if for any other reason only a portion of the quantity covered by one invoice is entered under one entry, a photocopy of the commercial invoice used in connection with the first entry, covering the quantity to be entered under another entry, may be used in connection with the subsequent entry of any portion of the merchandise not cleared under the first entry.

(b) *Entries from foreign-trade zone at one port.*—A photocopy of the invoice filed with the first entry for consumption from a foreign-trade zone of a portion of the merchandise shown on the invoice will not be required for any subsequent entry for consumption from that zone at the same port of a portion of any merchandise covered by such invoice, if a pro forma invoice is filed and identifies the entry first made and the invoice then filed.

(c) *Entries at different ports.*—When portions of a single shipment requiring a commercial invoice are entered at different ports, the importer may submit to the district director where the original invoice or latest photocopy of the original invoice is on file, two photocopies of the latest of such invoices to be certified as to merchandise previously received, and the official seal affixed thereto.

(d) *Pro forma invoice.*—In a case in which a portion of the shipment is entered at the first port on a pro forma invoice, an entry at a subsequent port may be made by means of a new pro forma invoice which may cover only the merchandise then entered.

(e) *Photocopy to satisfy bond for invoice.*—A properly certified photocopy of a commercial invoice presented within 6 months after the date of entry may be accepted to cancel the charges against the bond given for the production of the commercial invoice. **[TDs 84–213, 85–39.]**

§ 141.85 Pro forma invoice.

A pro forma invoice submitted in accordance with any provision of this chapter shall be in substantially the following form:

Pro Forma Invoice

Importers Statement Of Value Or The Price Paid In The Form Of An Invoice

Not being in possession of a commercial seller's or shipper's invoice I request that you accept the statement of value or the price paid in the form of an invoice submitted below:

Name of shipper
address _____

Name of seller
address _____

Name of consignee
address _____

Name of purchaser
address _____

The merchandise (has) (has not) been purchased or agreed to be purchased by me.

The prices, or in the case of consigned goods the values, given below are true and correct to the best of my knowledge and belief, and are based upon: (Check basis with an "X")

(a) The price paid or agreed to be paid (—) as per order dated _____.

(b) Advices from exporter by letter (—) by cable (—) dated _____.

(c) Comparative values of shipments previously received (—) dated _____.

(d) Knowledge of the market in the country of exportation (—) _____.

(e) Knowledge of the market in the U.S. (if U.S. Value) (—) _____.

(f) Advices of the District Director of Customs (—) _____.

(g) Other (—) _____.

A	B	C	D	E	F	G
Case marks numbers	Manufacturer's item No. symbol or brand	Quantities and full description	Unit purchase price (currency)	Total purchase price (currency)	Unit foreign value	Total foreign value

Check which of the charges below are, and which are not included in the prices listed in columns "D" and "E":

Amount	Included	Not included
Packing		
Cartage		
Inland freight		
Wharfage and loading abroad		
Lighterage		
Ocean freight		
U.S. duties		
Other charges (identify by name and amount)		
Total		

Country of origin _____.

If any other invoice is received, I will immediately file it with the District Director of Customs.

_____
(Signature of person making invoice)

_____
(Title and firm name)

Date _____

[TD 85-39.]

§ 141.86 Contents of invoices and general requirements.

(a) *General information required by Tariff Act.* Each invoice of imported merchandise shall set forth the following information:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the U.S.;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount including freight, insurance, commission, cases, containers, coverings, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price, and so identified. Where the required information does not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice; **[TDs 73-312, 79-221, 85-39.]**

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise;

(10) The country of origin of the merchandise; and

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the U.S. are excluded. Annual reports for goods and services, when approved by the district director, will be accepted as proof that the goods or services were provided. **[TD 85-39.]**

(b) *Nonpurchased merchandise shipped by other than manufacturer.* Each invoice of imported merchandise shipped to a person in the U.S. by a person other than the manufacturer and otherwise than pursuant to a purchase or agreement to purchase shall set forth the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) *Merchandise sold in transit.* If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the U.S., and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, shall be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice shall be filed together with the resale invoice or statement. **[TD 79-221.]**

(d) *Invoice to be in English.* The invoice and all attachments shall be in the English language, or shall have attached thereto an accurate English translation containing

adequate information for examination of the merchandise and determination of duties.

(e) *Packing list.* Each invoice shall state in adequate detail what merchandise is contained in each individual package.

(f) *Weights and measures.* If the invoice or entry does not disclose the weight, gage, or measure of the merchandise which is necessary to ascertain duties, the consignee shall pay the expense of weighing, gaging, or measuring prior to the release of the merchandise from Customs custody.

(g) *Discounts.* Each invoice shall set forth in detail, for each class or kind of merchandise, every discount from list or other base price which has been or may be allowed in fixing each purchase price or value.

(h) *Numbering of invoices and pages.*

(1) *Invoices.* When more than one invoice is included in the same entry, each invoice with its attachments shall be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* If the invoice or invoices filed with one entry consist of more than two pages, each page shall be numbered consecutively by the importer on the bottom of the face of each page. The page numbering shall begin with No. 1 for the first page of the first invoice and continue in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* When applicable, both the invoice number and the page number shall be shown at the bottom of each page. For example, if an entry covers one invoice of one page and a second invoice of two pages, the numbering at the bottom of the pages shall be as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3.

(i) *Information may be on invoice or attached thereto.* Any information required on an invoice by any provision of this subpart may be set forth either on the invoice or on an attachment thereto.

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction. **[TDs 79–221, 85–39.]**

§ 141.87 Breakdown on component materials.

Whenever the classification or appraisement of merchandise depends on the component materials, the invoice shall set forth a breakdown giving the value, weight, or other necessary measurement of each component material in sufficient detail to determine the correct duties.

§ 141.88 Computed value.

When the district director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in § 402(e), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(e)). **[TD 87–89.]**

§ 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise, classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), shall set forth the additional information specified: **[75–42, 75–239, 78–53, 83–251, 84–149.]**

Aluminum and alloys of aluminum classifiable under subheadings 7601.10.60, 7601.20.60, 7601.20.90, or 7602.00.00, HTSUS (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element contained in the article.

Articles manufactured of textile materials, coated or laminated with plastics or rubber, classifiable in Chapter(s) 39, 40, and 42—Include a description indicating whether the fabric is coated or laminated on both sides, on the exterior surface or on the interior surface.

Bags manufactured of plastic sheeting and not of a reinforced or laminated construction, classified in Chapter 39 or in heading 4202—Indicate the gauge of the plastic sheeting.

Ball or roller bearings classifiable under subheading 8482.10.50 through 8482.80.00, HTSUS (T.D. 68–306)—(1) Type of bearing (i.e., whether a ball or roller bearing); (2) If a roller bearing, whether a spherical, tapered, cylindrical, needled or other type; (3) Whether a combination bearing (i.e., a bearing containing both ball and roller bearings, etc.); and (4) If a ball bearing (not inlcuding ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) outside diameter of each bearing; and (b) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

Beads (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) The size of the beads expressed in millimeters, (3) The material of which the beads are composed, i.e., ivory, glass, imitation pearl, etc.

Bed linen and Bedspreads—Statement as to whether or not the article contains any embroidery, lace, braid, edging, trimming, piping or applique work.

Chemicals—Furnish the use and Chemical Abstracts Service number of chemical compounds classified in Chapters 27, 28 and 29, HTSUS.

Colors, dyes, stains and related products provided for under heading 3204, HTSUS—The following information is required: (1) Invoice name of product; (2) Trade name of product; (3) Identity and percent by weight of each component; (4) Color Index number (if none, so state); (5) Color Index generic name (If none so state); (6) Chemical Abstracts Service number of the active ingredient; (7) Class of merchandise (state whether acid type dye, basic dye, disperse dye, fluorescent brightener, soluble dye, vat dye, toner or other (describe); (8) Material to which applied (name the material for which the color, dye, or toner is primarily designed).

Copper (T.D. 45878, 50158, 55977) articles classifiable under the provisions of Chapter 74, HTSUS—A statement of the weight of articles of copper, and a statement of percentage of copper content and all other elements—by weight—of articles classifiable according to copper content.

Copper ores and concentrates (T.D. 45878, 50158, 55977) classifiable in heading 2603, and subheadings 2620.19.60, 2620.20.00, 2620.30.00, and heading 7401—Statement of the percentages by weight of the copper content and any other metallic elements.

Cotton fabrics classifiable under the following HTSUS headings: 5208, 5209, 5210, 5211, and 5212—(1) Marks on shipping packages, (2) Numbers on shipping packages; (3) Customer's call number, if any; (4) Exact width of the merchandise; (5) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, composed of yarns of different color, or dyed; if composed of cotton and other materials, state the percentage of each component material by weight; (6) Number of single threads per square centimeter (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate: a cloth containing 100 two-ply yarns in one square centimeter must be reported as 200 single threads); (7) Exact weight per square meter in grams; (8) Average yarn number use this formula:

$$\frac{100 \times \text{(Total Single Yarns Per Square Centimeter)}}{\text{(Number of Grams Per Square Meter)}}$$

(9) Yarn size or sizes in the warp; (10) Yarn size or sizes in the filling; (11) Specify whether the yarns are combed or carded; (12) Number of colors or kinds (different yarn sizes or materials) in the filling; (13) Specify whether the fabric is napped or not napped; and (14) Specify whether the type of weave, for example, plain, twill, sateen, oxford, etc., and (15) Specify the type of machine on which woven: if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt.), if with Dobby (Dobby).

Cotton raw—See § 151.82 of this chapter for additional information required on invoices.

Cotton waste (T.D. 50044)—(1) The name by which the cotton waste is known, such as "cotton card strips"; "cotton comber waste"; "cotton lap waste"; "cotton sliver waste"; "cotton roving waste"; "cotton fly waste"; etc.; (2) Whether the length of the cotton staple forming any cotton card strips covered by the invoice were made is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.

Earthenware or crockeryware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles in each set in the shipment and the quantity of each kind of article in each set in the shipment; (2) The exact maximum diameter, expressed in centimeters, of each size of all plates in the shipment; (3) The unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

Fish or fish livers (T.D. 50724, 49640, 55977) imported in airtight containers classifiable under Chapter 3, HTSUS—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease, (2) The name and quantity of any such oil, fat, or grease.

Footwear, classifiable in headings 6401 through 6405 of the HTSUS—

1. Manufacturer's style number.
2. Importer's style and/or stock number.
3. Percent by area of external surface area of upper (excluding reinforcements and accessories) which is:

Leather	a._____%
Composition Leather	b._____%
Rubber and/or plastics	c._____%
Textile materials	d._____%
Other (give separate	e._____%
Percent for each Type of material)	f._____%

4. Percent by area of external Surface area of outersole (excluding reinforcements and accessories) which is:

Leather	a._____%
Composition Leather	b._____%
Rubber and/or plastics	c._____%
Textile materials	d._____%
Other (give separate	e._____%
Percent for each Type of material)	f._____%

You may skip this section if you choose to answer *all* questions A through Z below.

I. If 3(a) is larger than any other percent in 3 and if 4(a) is larger than any other percent in 4, answer questions F, G, L, M, O, Q, R, S, and X.

II. If 3(a) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions F, G, L, M, N, O, Q, S, and X.

III. If 3(a) plus 3(b) is larger than any single percent in 3 and if 4(d), 4(e) or 4(f) is larger than any other percent in 4, stop.

IV. If 3(c) is larger than any other percent in 3 and if 4(a) or 4(b) is larger than any other percent in 4, stop.

V. If 3(c) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions B, E, F, G, H, J, K, L, M, N, O, P, T and W.

VI. If 3(d) is larger than any other percent in 3 and if 4(a) plus 4(b) is larger than any single percent in 4, answer questions C and D.

VII. If 3(d) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions A, C, J, K, M, N, P and T.

VIII. If 3(d) is larger than any other percent in 3 and if 4(d) is larger than any other percent in 4, answer questions U, Y and Z.

IX. If the article is made of paper, answer questions V and Z.

If the article does not meet any of conditions I through IX above, answer all questions A through Z, below.

A Percent of external surface area of upper (including leather reinforcements and accessories)

Which is leather _____%

B Percent by area of external surface area of upper (*including* all reinforcements and accessories).

Which is rubber and/or plastics _____%

C Percent by weight of rubber and/or plastics is _____%

D Percent by weight of textile materials plus rubber and/or plastics is _____%

E Is it waterproof?

F Does it have a protective metal toe cap?
G Will it cover the wearer's ankle bone?
H Will it cover the wearer's knee cap?
I [Reserved.]
J Is it designed to protect against water, oil, grease, or chemicals, or cold or inclement weather?
K Is it a slip-on?
L Is it a downhill or cross-country skiboot?
M Is it serious sports footwear other than skiboots? (Chapter 64 subheading note defines sports footwear.)
N Is it a tennis, basketball, gym, or training shoe or the like?
O Is it made on a base or platform of wood?
P Does it have open toes or open heels?
Q Is it made by the (lipped insole) welt construction?
R Is it made by the turned construction?
S Is it worn exclusively by men, boys or youths?
T Is it made by an exclusively adhesive construction?
U Are the fibers of the upper, by weight, predominately vegetable fibers?
V Is it disposable, i.e., intended for one-time use?
W Is it a "Zori"?
X Is the leather in the upper pigskin?
Y Are the sole and upper made of woolfelt?
Z Is there a line of demarcation between the outer sole and upper?

The information requested above may be furnished on CF 5523 or other appropriate format by the exporter, manufacturer or shipper.

Also, the following information must be furnished by the importer or his authorized agent if classification is claimed under one of the subheadings below:

If subheading 6401.99.80, 6402.19.10, 6402.30.30, 6402.91.40, 6402.99.15, 6402.99.30, 6404.11.40, 6404.11.60, 6404.19.35, 6404.19.40, or 6404.19.60 is claimed:

Does the shoe have a foxing or foxing-like band? If so, state its material(s).

Does the sole overlap the upper other than just at the front of the toe and/or at the back of the heel?

Definitions for some of the terms used in questions A to Z above: For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

a. In an *exclusively adhesive construction,* all of the piece(s) of the bottom would separate from the upper or from each other if all adhesives, cements, and glues were dissolved. It includes shoes in which the pieces of the upper are stitched to each other, but not to any part of the bottom. Examples include:

1. Vulcanized construction footwear;

2. Simultaneous molded construction footwear;

3. Molded footwear in which the upper and the bottom are one piece of molded rubber or plastic, and

4. Footwear in which staples, rivets, stitching, or any of the methods above are either primary or just extra or auxiliary, even though adhesive is a major part of the reason the bottom will not separate from the upper.

b. *Composition leather* is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

c. *Leather* is the tanned skin of any animal from which the fur or hair has been removed. Tanned skins coated or laminated with rubber and/or plastics are "leather" only if the leather gives the material its essential character.

d. A *line of demarcation* exists if one can indicate where the sole ends and that upper begins. For example, knit booties do not normally have a line of demarcation.

e. *Men's, boys' and youths'* sizes cover footwear of American youths sizes 11½ and larger for males, and do not include footwear commonly worn by both sexes. If more than 4% of the shoes sold in a given size will be worn by females, that size is "commonly worn by both sexes."

f. Footwear is designed to *protect* against water, oil or cold or inclement weather only if it is substantially more of a protection against those items than the usual shoes of that type. For example, leather oxfords will clearly keep one's feet warmer and drier than going barefoot, but they are not a protection in this sense. On the other hand the snow-jogger is the protective version of the nonprotective jogging shoe.

g. *Rubber and/or plastics* includes any textile material visibly coated (or covered) externally with one or both of those materials.

h. *Slip-on* includes:

1. A boot which must be pulled on.

2. Footwear with elastic cores which must be stretched to get it on, but not bootwear having a separate piece of elasticized fabric which forms a full circle round the foot or ankle.

i. *Sports footwear* includes only:

(1) Footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(2) Skating boots (without skates attached), ski boots and cross-country ski footwear, wrestling boots, boxing boots and cycling shoes.

j. *Tennis shoes, basketball shoes, gym shoes, training shoes and the like* covers athletic footwear other than sports footwear, whether or not principally used for such athletic games or purposes.

k. *Textile materials* are made from cotton, other vegetable fibers, wool, hair, silk or man-made fibers. Note: Cork, wood cardboard and leather are not textile materials.

l. In *turned* construction, the upper is stitched to the leather sole wrong side out and the shoe is then turned right side out.

m. *Vegetable fibers* include cotton, flax and ramie, but do not include either rayon or plaiting materials such as rattan or wood strips.

n. *Waterproof footwear* includes footwear designed to protect againt penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

o. *Welt footwear* means footwear constructed with a welt, which extends around the edge of the outer sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outer sole is sewed or cemented to the welt.

p. A *zori* has an upper consisting only of straps or thongs of molded rubber or plastic. This upper is assembled to a foamed rubber or plastic sole by means of plugs.

Fur products and furs (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to § 7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) A statement that the fur product contains or is composed of used fur, when such is the fact; (3) A statement that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) A statement that the fur product is composed wholly or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) Name and address of the manufacturer of the fur product; (6) Name of the country of origin of the furs or those contained in the fur product.

Glassware and other glass products (T.D. 53079, 55977)—Classifiable under Heading 7013 HTSUS—Statement of the separate value of each component article in the set.

Gloves—State if the merchandise has a plastics or a rubber exterior. (See Chapter 59, Note 2(a)(3)).

Grain or grain and screenings (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

Handkerchiefs—(1) State the exact dimensions (length and width) of the merchandise; (2) If of cotton indicate whether the handkerchief is hemmed and whether it contains lace or embroidery.

Hats or headgear—(1) If classifiable under subheading 6502.00.40 or 6502.00.60, HTSUS—Statement as to whether or not the article has been bleached or colored; (2) If classifiable under subheadings 6502.00.20 through 6502.00.60 or 6504.00.30 through 6504.00.90, HTSUS—Statement as to whether or not the article is sewed or not sewed, exclusive of any ornamentation or trimming.

Hosiery—(1) Indicate whether a single yarn measures less than 67 decitex. (2) Indicate whether the hosiery is full length, knee length, or less than knee length. (3) Indicate whether it contains lace or net.

Iron or steel classifiable in Chapter 72 or headings 7301 to 7307, HTSUS (T.D. 53092, 55977)—Statement of the percentages by weight of carbon and any metallic elements contained in the articles, in the form of a mill analysis or mill test certificate.

Iron oxide (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

Machines, equipment and apparatus—Chapters 84 and 85, HTSUS—A statement as to the use or method of operation of each type of machine.

Machine parts (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kinds of machines for which the parts are suitable.

Machine tools: (1) Headings 8456 through 8462—machine tools covered by these headings equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC must state so; (2) Headings 8458 through 8463—machine tools covered by these headings if used or rebuilt must state so; (3) Subheading 8456.30.10—EDM: (Electrical Discharge Machines) if a Traveling Wire (Wire Cut) type must state so. Wire EDM's use a copper or bass wire for the electrode; (4) Subheading 8457.10.0010 through 8457.10.0050—Machining Centers. Must state whether or not they have an ATC (Automatic Tool Changer). Vertical spindle machining centers with an ATC must also indicate the Y-travel; (5) Subheadings 8458.11.0030 through 8458.11.0090—horizontal lathes: numerically controlled. Must indicate the rated HP (or KW rating) of the main spindle motor. Use the continuous rather than the 30 minute rating.

Madeira embroideries (T.D. 49988)—(1) With respect to the materials used, furnish: (a) country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) With respect to the finished embroidered articles, furnish: (a) manufacturer's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

Motion-picture films—(1) Statement of footage, title, and subject matter of each film; (2) Declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

Paper classifiable in Chapter 48—Invoices covering paper shall contain the following information, or will be accompanied by specification sheets containing such information:

(1) Weight of paper in grams per square meter; (2) Thickness, in micrometers (microns); (3) If imported in rectangular sheets, length and width of sheets, in cm; (4) If imported in strips, or rolls, the width, in cm. In the case of rolls, the diameter of rolls in cm; (5) Whether the paper is coated or impregnated, and with what materials; (6) Weight of coating, in grams per square meter; (7) Percentage by weight of the total fiber content consisting of wood fibers obtained by a mechanical process, chemical sulfate or soda process, chemical sulfite process, or semi-chemical process, as appropriate; (8) Commercial designation, as "Writing", "Cover", "Drawing", "Bristol", "Newsprint", etc.; (9) Ash content; (10) Color; (11) Glaze, or finish; (12) Mullen bursting strength, and Mullen index; (13) Stretch factor, in machine direction and in cross direction; (14) Tear and tensile readings; in machine direction, in cross direction, and in machine direction plus cross direction; (15) Identification of fibers as "hardwood" where appropriate; (16) Crush resistance; (17) Brightness; (18) Smoothness; (19) If bleached, whether bleached uniformly throughout the mass; (20) Whether embossed, perforated, creped or crinkled.

Plastic plates, sheets, film, foil and strip of headings 3920 and 3921—(1) Statement as to whether the plastic is cellular or noncellular; (2) Specification of the type of plastic; (3) Indication of whether or not flexible and whether combined with textile or other material.

Printed matter classifiable in Chapter 49—Printed matter entered in the following headings shall have, on or with the invoices covering such matter, the following information: (1) *Heading 4901*—(a) Whether the books are: dictionaries, encyclopedias, textbooks, bound newspapers or journals or periodicals, directories, bibles or other prayer books, technical, scientific or professional books, art or pictorial books, or "other" books; (b) if "other" books, whether hardbound or paperbound; (c) if "other" books, paperbound, other than "rack size": number of pages (excluding covers). (2) *Heading 4902*—(a) whether the journal or periodical appears at least four times a week. If the journal or periodical appears other than at least four times a week, whether it is a newspaper supplement printed by a gravure process, is it a newspaper, business or professional journal or periodical, or other than these; (3) *Heading 4904*—Whether the printed or manuscript music is sheet music, not bound (except by stapling or folding); (4) *Heading 4905*—(a) whether globes or not; (b) if not globes, whether in book form or not; (c) in any case, whether or not in relief; (5) *Heading 4908*—Whether or not vitrifiable; (6) *Heading 4904*—Whether post cards, greeting cards, or other; (7) *Heading 4910*—(a) Whether or not printed on paper by a lithographic process; (b) if printed on paper by a lithographic process, the thickness of the paper, in mm; (8) *Subheading 4911.91*—(a) Whether or not printed over 20 years at time of importation; (b) if printed not over 20 years at time of importation, whether suitable for use in the production of articles of heading 4901; (c) if not printed over 20 years at time of importation, and not suitable for use in the production of articles of heading 4901, whether the merchandise is lithographs on paper or paperboard; (d) if lithographs on paper or paperboard, under the terms of the immediately preceding description, thickness of the paper or paperboard, and whether or not posters; (e) in any case, whether or not posters; (f) in any case, whether or not photographic negatives or positives on transparent bases; (g) *Subheading 4911.99*—If not carnets, or parts thereof, in English or French, whether or not printed on paper in whole or in part by a lithographic process.

Pulp classifiable in Chapter 47—(1) Invoices covering chemical woodpulp, dissolving grades, in *Heading 4702* shall state the insoluble fraction (as a percentage) after 1 hour in a caustic soda solution containing 18% sodium hydroxide (NaOH) at 20° C; (2) *Subheading 4702.00.0020*—Pulp entered under this subheading shall in addition contain on or with the invoice the ash content as a percentage to the third decimal point, by weight.

Refrigeration equipment (1) Refrigerator-freezers classifiable under subheading 8418.10.00 and (2) refrigerators classifiable under subheading 8418.21.00—(a) Statement as to whether they are compression or absorption type; (b) Statement of their refrigerated volume in liters. (3) Freezers classifiable under subheading 8418.30.00 and 8418.40.00—Statement as to whether they are chest or upright type. (4) Liquid chilling refrigerating units classifiable under subheadings 8418.69.0045 through 8418.69.0060—Statement as to whether they are centrifugal open-type, centrifugal hermetic-type, absorption-type or reciprocating type.

Rolling mills—Subheadings 8455.30.0005 through 8455.30.0085. Rolls for rolling mills: Indicate the composition of the roll—gray iron, cast steel or other—and the weight of each roll.

Rubber products of Chapter 40—(1) Statement as to whether combined with textile or other material; (2) Statement whether the rubber is cellular or noncellular, unvulcanized or vulcanized, and if vulcanized, whether hard rubber or other than hard rubber.

Screenings or scalpings of grains or seeds (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) If so, whether any cultivated grains have been added to such commodity; (3) If any such grains have been added, the kind and percentage of each.

Textile fiber products (T.D. 55095)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the product or one or more persons subject to § 3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured. *See also* "Wearing Apparel" below.

Tires and tubes for tires, of rubber or plastics—(1) Specify the kind of vehicle for which the tire is intended, i.e., airplane, bicycle, passenger car, on-the-highway light or heavy truck or bus, motorcycle; (2) If designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in Chapter 84 or in subheading 8716.80.10, designate whether the tire is new, recapped, or used; pneumatic or solid; (3) Indicate whether the tube is designed for tires provided for in subheading 4011.91.10, 4011.99.10, 4012.10.20, or 4012.20.20.

Tobacco (including tobacco in its natural state) (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and person from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase, state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, they shall be invoiced as mixed; and when containing more than 35 percent of wrapper, they shall be invoiced as wrapper.

Watches and watch movements classifiable in Chapter 91 of the HTSUS—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, type, or model, the following:

(A) For watches, a thorough description of the composition of the watch cases, the bracelets, bands or straps; the

commercial description (ebauche caliber number, ligne size and number of jewels) of the movements contained in the watches; and the type of battery (manufacturer's name and reference number), if the watch is battery-operated;

(B) For watch movements, the commercial description (ebauche caliber number, ligne size and number of jewels). If battery-operated, the type of battery (manufacturer's name and reference number);

(C) The name of the manufacturer of the exported watch movements and the name of the country in which the movements were manufactured.

Wearing apparel—(1) All invoices for textile wearing apparel should indicate a component material breakdown in percentages by weight for all component fibers present in the entire garment, as well as separate breakdowns of the fibers in the (outer) shell (exclusive of linings, cuffs, waistbands, collars and other trimmings) and in the lining. (2) For garments which are constructed or more than one component or material (combinations of knit and not knit fabric or combinations of knit and/or not knit fabric with leather, fur, plastic including vinyl, etc.), the invoice must show a fiber breakdown in percentages by weight for each separate textile material in the garment and a breakdown in percentages by weight for each nontextile material for the entire garment; (3) For woven garments—Indicate whether the fabric is yarn dyed and whether there are "two or more colors in the warp and/or filling"; (4) For all-white T-shirts and singlets—Indicate whether or not the garment contains pockets, trim, or embroidery; (5) For mufflers—State the exact dimensions (length and width) of the merchandise.

Wood products—(1) Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm (lumber), classifiable under Chapter 44, heading 4407, HTSUS, and wood continuously shaped along any of its edges or faces, whether or not planed, sanded or finger-jointed: Coniferous: Subheading 4409.10.90 and Nonconiferous: Subheading 4409.20.90, HTSUS, and dutiable on the basis of cubic meters——

Quantity in cubic meters (m) before decreasing; (2) Fiberboard of wood or other ligneous materials whether or not bonded with resins or other organic substances, under Chapter 44, Heading 4411, HTSUS, and classifiable according to its density—Density in grams per cubic centimeter (cm); (3) Plywood consisting solely of sheets of wood, classifiable under Chapter 44, Subheading 4412.11, 4412.12, and 4412.19, HTSUS, and classifiable according to the thickness of the wood sheets—Thickness of each ply in millimeter (mm).

Wool and hair—See § 151.62 of this chapter for additional information required on invoices.

Wool products, except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (e) the aggregate of all fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

Woven fabric of man-made fibers in headings 5407, 5408, 5512, 5513, 5514, 5515, 5516—

(1) State the exact width of the fabric;

(2) Provide a detailed description of the merchandise, (trade name, if any);

(3) Indicate whether bleached, unbleached, dyed, of yarns of different colors and/or printed;

(4) If composed of more than one material, list percentage by weight in each;

(5) Identify the man-made fibers as artificial or synthetic, filament or staple, and state whether the yarns are high tenacity. Specify the number of turns per meter in each yarn;

(6) Specify yarn sizes in warp and filling;

(7) Specify how the fabric is woven (plain weave, twill, sateen, dobby, jacquard, swivel, lappet, etc.);

(8) Indicate the number of single threads per square centimeter in both warp and filling;

(9) Supply the weight per square meter in grams;

(10) Provide the average yarn number using this formula:

$$\frac{100 \times \text{number of single threads per square centimeter}}{\text{(number of grams per square meter)}};$$

(11) For spun yarns, specify whether combed or carded.

(12) For filament yarns, specify whether textured or not textured.

Yarns—(1) All yarn invoices should show: (a) Fiber content by weight; (b) whether single or plied; (c) whether or not put up for retail sale (*See* Section XI, Note 4, HTSUS); (d) whether or not intended for use as sewing thread;

(2) If chief weight of silk—show whether spun or filament;

(3) If chief weight of cotton—show:

(a) whether combed or uncombed

(b) metric number (mn)

(c) whether bleached and/or mercerized;

(4) If chief weight of man-made fiber—show:

(a) whether filament, or spun, or a combination of filament and spun

(b) If a combination of filament and spun—give percentage of filament and spun by weight.

(5) If chief weight of filament man-made fiber—show:

(a) whether higher tenacity (See Section XI, note 6 HTSUS).

(b) whether monofilament, multifilament or strip

(c) whether texturized

(d) yarn number in decitex

(e) number of turns per meter

(f) for monofilaments—show cross sectional dimension in millimeters

(g) for strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported). **[TD 89-1.]**

(b) *Special Summary Steel Invoice.* (1) A Special Summary Steel Invoice (Customs form 5520) shall be filed in duplicate at the time of filing the entry summary for each shipment determined by the district director to have an aggregate purchase price of $10,000 or over or, if from a contiguous country, of $5,000 or over, (including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States), and containing any of the articles of steel listed in paragraph (b) (2) of this

section. In addition to the information required by § 141.86, the Special Summary Steel Invoice shall set forth the following: **[TDs 78–53, 79–79, 79–221, 81–291, 89–1.]**

(A) The date of agreement on the final sales price for the shipment.

(B) A description of, and the additional price charged for, extras, other than width and length, with extras described in terms understood in the U.S. market.

(C) American Iron and Steel Institute (AISI) category.

(D) The base price for each steel category on which the total sales price was based.

(E) The name of the producer, the importer, and the price paid by the first unrelated purchaser in the U.S., if that price is available at the time of filing the entry summary. One or more continuation sheets may be used to supply this information, if necessary. **[TDs 79–221, 88–79.]**

(2) The following articles of steel, listed by AISI category and product name are subject to the special invoice requirements of § 141.89(b)(1):

(1) Ingots, blooms, billets, slabs, etc.
(2) Wire rods.
(3) Structural shapes, plain 76 mm and over.
(4) Sheet piling.
(5) Plates.
(6) Rail and track accessories.
(7) Wheels and axles.
(8) Concrete reinforcing bars.
(9) Bar shapes under 76 mm.
(10) Bars, hot rolled, carbon.
(11) Bars, hot rolled, alloy.
(12) Bars, cold finished.
(13) Hollow drill steel.
(14) Welded pipe and tubing.
(15) Other pipe and tubing.
(16) Round and shaped wire.
(17) Flat wire.
(18) Bale ties.
(19) Galvanized wire fencing.
(20) Wire nails.
(21) Barbed wire.
(22) Black plate.
(23) Tin plate.
(24) Terne plate.
(25) Sheets, hot rolled.
(26) Sheets, cold rolled.
(27) Sheets, coated including galvanized.
(28) Sheets, coated, alloy.
(29) Strip, hot rolled.
(30) Strip, cold rolled.
(31) Strip, hot and cold rolled—alloy.
(32) Sheets other, electric coated.
(38) Fabricated structurals.
(43) Wire rope.
(44) Wire strand.
(51) Rigid conduit.

(Note.—Although not in sequence with existing numbers in § 141.89(b)(2), the numbers listed are those assigned to these articles by the American Iron and Steel Institute.) **[TDs 87–43, 89–1.]**

§ 141.90 Notation of tariff classification and value on invoice.

(a) *To be approved by district director.* The entered tariff classification, rate of duty, value, and estimated duties shall be as approved by the district director.

(b) *Classification and rate of duty.* The appropriate subheading of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and the rate of duty shall be noted by the importer in the left-hand portion of the invoice, next to the articles to which they apply.

(c) *Value.* The importer shall show in clear detail on the invoice or on an attached statement the computation of all deductions from total invoice value, such as nondutiable charges, and all additions to invoice value which have been made to arrive at the aggregate entered value. In addition, the entered unit value for each article on the invoice shall be shown where it is different from the invoiced unit value.

(d) *Importer's notations in blue or black ink.* All notations made on the invoice by the importer or broker shall be in blue or black ink. (Sec. 487, 46 Stat. 725, as amended; 19 U.S.C. 1487) **[TD 89–1.]**

§ 141.91 Entry without required invoice.

If a required invoice, other than a special summary invoice, is not available in proper form at the time the entry or entry summary documentation is filed and a waiver is not granted in accordance with § 141.92, the entry or entry summary documentation shall be accepted only under the following conditions: **[TDs 78–53, 79–221.]**

(a) The district director is satisfied that the failure to produce the required invoice is due to a cause beyond the control of the importer;

(b) The importer files—

(1) A written declaration that he is unable to produce such invoice, and

(2) Any seller's or shipper's invoices available to him or, if none are available, a pro forma invoice in accordance with § 141.85;

(c) The invoices and other documents contain information adequate for the examination of merchandise, the determination of estimated duties, if any, and statistical purposes; and

(d) The importer files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise, for the production of the required invoice, which must be produced within 120 days after the date of the filing of the entry summary (or the entry, if there is no entry summary) documentation, unless the invoice is needed for statistical purposes. If needed for statistical purposes, the invoice shall be produced within 50 days after the date the entry summary (or the entry, if there is no entry summary) is required to be filed, unless a reasonable extension of time is granted by the district director for good cause shown. **[TDs 79–221, 84–213, 85–167.]**

§ 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted.* The district director may waive production of a required invoice, except a special summary invoice required by § 141.83(b), when he is satisfied that either:

(1) The importer cannot by reason of conditions beyond his control furnish a complete and accurate invoice; or

(2) The examination of merchandise, final determination of duties, and collection of statistics can be effected properly without the production of the required invoice. **[TD 79–221.]**

(b) *Documents to be filed by importer.* As a condition to the granting of a waiver, the importer shall file the following documents with the entry or entry summary:

(1) Any invoice or invoices received from the seller or shipper;

(2) A statement pointing out in exact detail any inaccuracies, omissions, or other defects in such invoice or invoices;

(3) An executed pro forma invoice in accordance with § 141.85; and

(4) Any other information required by the district director for either appraisement or classification of the merchandise, or for statistical purposes.

(c) *Satisfaction of bond liability.* The liability under the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of a correct invoice shall be deemed satisfied when a waiver has been granted pursuant to this section. **[TD 84-213.]**

Subpart G—Deposit of Estimated Duties

§ 141.101 Time of deposit.

Estimated duties shall be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, except in the following cases:

(a) *Merchandise released under entry documentation.*—In the case of merchandise released under the entry documentation listed in § 142.3 of this chapter before filing of the entry summary, deposit of estimated duties shall be made at the time the entry summary is filed unless the merchandise is entered for warehouse. If the merchandise is entered for warehouse, estimated duties shall be deposited in accordance with paragraph (b) of this section. **[TD 79-221.]**

(b) *Warehouse entry.* In the case of merchandise entered for warehouse, deposit of estimated duties shall be made at the time the withdrawal for consumption is presented.

(c) *Informal mail entry.* In the case of merchandise entered under an informal mail entry, duties shall be paid to the postal employee at the time he delivers the merchandise to the addressee (see Part 145 of this chapter).

(d) *Appraisement entries.* In the case of merchandise entered under an appraisement entry, deposit of estimated duties shall be made immediately after notification by the appropriate Customs officer of the amount of duties due.

(e) *Entry for transportation or under bond.* No deposit of estimated duties is applicable in the case of merchandise entered for transportation or temporarily imported under bond, entered for permanent exhibition under bond, entered for a trade fair under bond, or entered under bond for similar reasons. **[TD 84-213.]**

§ 141.102 When deposit of estimated duties not required.

Entry or withdrawal for consumption in the following situations may be made without depositing the estimated Customs duties, or estimated taxes, or both, as specifically noted:

(a) *Cigars and cigarettes.* A qualified dealer or manufacturer may enter or withdraw for consumption cigars, cigarettes, and cigarette papers and tubes without payment of internal revenue tax in accordance with § 11.2(a) of this chapter.

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant under the provisions of § 5232(a), Internal Revenue Code of 1954, as amended (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 251), by filing an approved original copy of Alcohol, Tobacco and Firearms Form 2609 (5110.16) with the entry or withdrawal for consumption, instead of depositing taxes. **[TD 78-329.]**

(c) *Deferral of payment of taxes on alcoholic beverages.* An importer may pay on a semimonthly basis the estimated Internal Revenue taxes on all the alcoholic beverages entered or withdrawn for consumption during that period, under the procedures set forth in § 24.4 of this chapter.

(d) *Government entries.* If a shipment is entered or withdrawn for consumption by a U.S. Government department or agency, or an authorized representative thereof, no deposit of estimated Customs duties or taxes shall be required if a stipulation is furnished in lieu of the bond. The proper department or agency will then be billed after liquidation of the entry for any duties or charges due. The stipulation shall be in the following form: **[TDs 74-227, 84-213.]**

I, _____, _____ (title), a duly authorized representative of the

_____

(name of U.S. Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and of all other laws and regulations, relating to

_____

(type of entry)

entry No. _____, of _____ (date) will be observed and complied with in all respects.

_____

(Signature)

§ 141.103 Amount to be deposited.

Estimated duties shall be deposited in an amount deemed necessary by the district director to sufficiently cover the prospective duties on each item being entered or withdrawn.

§ 141.104 Computation of duties.

In computing estimated duties, fractional parts of dollars and quantities shall be rounded off in accordance with § 159.3 of this chapter.

§ 141.105 Voluntary deposit of additional duties.

If either the importer of record or the actual owner whose declaration and superseding bond have been filed in accordance with § 141.20 desires, he may estimate, on the basis of information contained in the entry papers or obtainable from the district director, the probable amount of unpaid duties which will be found due on the entire entry and deposit them in whole or in part with the district director. The deposit shall be tendered in writing in the following form in the number of copies required for the purposes of local administration, and an official receipt shall be given for the deposit:

Date _____.

To the District Director of Customs,

Tender is hereby voluntarily made of $ _____ as a supplemental deposit of estimated duties and taxes on _____ entry No.

_____, dated _____, in the name of _____. Please provide an official receipt.

_____
(Importer of record) or (actual owner)

_____
(Street address)

_____
(City) (State)

Subpart H—Release of Merchandise

§ 141.111 Carrier's release order.

(a) *When required.* Except where release is made directly to the carrier in accordance with § 141.11(b), no merchandise shall be released from Customs custody until a release order has been executed by the carrier, or, in the case of merchandise in a bonded warehouse, by the warehouse proprietor.

(b) *Form of release.* The release order may be executed on any of the following documents:

[Reserved TD 87-75.]

(2) The official entry form;

(3) A combined carrier's certificate and release order issued in accordance with § 141.11(a)(4); or

(4) If a certified duplicate bill of lading or air waybill is used for entry purposes in accordance with § 141.11(a)(3), the carrier's release order may be endorsed thereon in substantially the following form: **[TD 78-394.]**

In accordance with the provisions of § 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by this certified duplicate bill of lading or air waybill to: _____.

[Reserved TD 87-75.]

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign trade zone. **[TD 86-16.]**

§ 141.112 Liens for freight, charges, or contribution in general average.

(a) *Definitions.* The following are general definitions for the purposes of this section:

(1) *Freight.* "Freight" means the charges for the transportation of the goods from the place of shipment in the foreign country to the final destination in the U.S.

(2) *Charges.* "Charges" means the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the U.S., but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods.

(3) *General average.* "General average" means the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of such cargo has been made for the preservation of the residue or when money is expended to preserve the whole. It only arises from actions impelled by necessity.

(4) *Claimant.* "Claimant" means a carrier, customs broker or the successors or assigns of either.

(b) *Notice of lien.* A notice of lien for freight, charges, or contribution in general average pursuant to § 564, Tariff Act of 1930, as amended (19 U.S.C. 1564), shall be filed with the district director on Customs Form 3485, signed by the authorized agent of the carrier and certified by him.

(c) *Preliminary notice of lien for contribution in general average.* When the cargo of a vessel is subject to contribution in general average, a preliminary notice thereof may be filed with the district director and individual notices of lien filed thereafter. Upon receipt of a preliminary notice, the district director shall withhold release of any merchandise imported in the vessel for 2 days (exclusive of Sunday and holidays) after such merchandise is taken into Customs custody, unless proof is submitted that the claim for contribution in general average has been paid or secured.

(d) *Merchandise entered for immediate transportation.* A notice of lien upon merchandise entered for immediate transportation shall be filed by the carrier with the district director at the destination.

(e) *Limitations on acceptance of notice of lien.* A notice of lien shall be rejected and returned with the reason for rejection noted thereon if it is filed after any of the following actions have been taken concerning the merchandise:

(1) Release from Customs custody;

(2) Forfeiture under any provision of law;

(3) Sale as unclaimed or abandoned merchandise under § 491 or § 559, Tariff Act of 1930, as amended (19 U.S.C. 1491 or 1559); or

(4) Receipt and acceptance of a notice of abandonment to the Government under § 506(1) or § 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1) or 1563(b)).

(f) *Forfeited or abandoned merchandise.* The acceptance of a notice of lien shall not in any manner affect the order of disposition and accounting for the proceeds of sales of forfeited and abandoned property provided for in subpart D of Part 127 and §§ 158.10 and 162.51 of this chapter. **[TDs 74-114, 88-7.]**

(g) *Bond may be required.* When any doubt exists as to the validity of a lien filed with the district director, he may require a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, to hold him harmless from any liability which may result from withholding the release of the merchandise. **[TD 84-213.]**

(h) *Satisfaction of lien.* The district director shall not adjudicate any dispute respecting the validity of any lien, but when the amount of such lien depends upon the quantity or weight of merchandise actually landed, the district director shall hold the lien satisfied upon the payment of an amount computed upon the basis of the official Customs report of quantity and weight. In all other cases, proof that the lien has been satisfied or discharged shall consist of a written release or receipt signed by the claimant and filed with the district director, showing payment of the claim in full. (Sec. 564, 46 Stat. 747, as amended; 19 U.S.C. 1564.)

§ 141.113 Recall of merchandise released from Customs custody.

(a) *Merchandise not legally marked.* Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(1) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

(2) Textile Fiber Products Identification Act (15 U.S.C. 70);

(3) Wool Products Labeling Act (15 U.S.C. 68);

(4) Fur Products Labeling Act (15 U.S.C. 69); and

(5) Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (HTSUS) (19 U.S.C. 1202), pertaining to special marking for watch and clock movements, cases, and dials.

If such merchandise is found after release to be not legally marked, the district director may demand its return to Customs custody for the purpose of requiring it to be properly marked or labeled. The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the district director.

(b) *Other merchandise not entitled to admission.* If at any time after entry the district director finds that any merchandise contained in an importation is not entitled to admission into the commerce of the U.S. for any reason not enumerated in paragraph (a) of this section, he shall promptly demand the return to Customs custody of any such merchandise which has been released.

(c) *Request for samples or additional examination packages not complied with by importer.* If the importer has not promptly complied with a request for samples or additional examination packages made by the district director pursuant to § 151.11 of this chapter, the district director may demand the return of the necessary merchandise to Customs custody.

(d) *Demand to importer of record or actual owner.* A demand for the return of merchandise to Customs custody shall be made on the importer of record, except that it shall be made on the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with § 141.20 before the date of the demand.

(e) *Form of demand.* A demand for the return of merchandise to Customs custody shall be made on Customs Form 4647 or other appropriate form, or by letter. One copy, with the date of mailing or delivery noted thereon, shall be retained by the district director and made part of the entry record.

(f) *Time limitation.* A demand for the return of merchandise to Customs custody shall not be made after the liquidation of the entry covering such merchandise has become final.

(g) *Demand not complied with.* When the demand of the district director for return of merchandise to Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under Chapter 98, Subchapter XII, HTSUS (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned, as determined at the time of entry, plus the estimated duties and taxes, if any. The amount of liquidated damages to be assessed on merchandise entered under schedule 8, part 5C, Tariff Schedules of the United States, are set forth in § 10.39(d)(3) of this chapter. (Secs. 499, 623, 46 Stat. 728, as amended, 759, as amended; 19 U.S.C. 1499, 1623). **[TDs 74-227, 89-1.]**

PART 142—ENTRY PROCESS

Sec.

142.0 Scope.

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Authority: 19 U.S.C. 66, 1448, 1484, 1624.

Source: T.D. 79-221, 44 FR 46821, August 9, 1979, unless otherwise noted.

§ 142.0 Scope.

This part sets forth requirements and procedures relative to (a) the entry of merchandise, as authorized by § 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), and (b) special permits for immediate delivery of merchandise, as authorized by § 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)). **[TD 73-175.]**

§ 142.1 Definitions.

For definitions of "entry", "entry summary," "submission", "filing," "presentation", "entered for consumption", "entered for warehouse", and "entered temporarily under bond", as these terms relate to the entry of merchandise, see §141.0a of this chapter. **[TD 84-213.]**

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time is authorized by law or regulation, or by the district director in writing.

(b) *Before arrival of merchandise*—(1) *Entry.* The entry documentation required by § 142.3(a) may be submitted before the merchandise arrives within the limits of the port where entry is to be made, in which case the time of entry shall be the time specified in § 141.68(a).

(2) *When entry summary serves as entry.* The entry summary when it will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b), may be submitted for preliminary review in accordance with §§ 141.63(a) and 142.12(a)(2).

§ 142.3 Entry documentation required.

(a) *Contents.* Except as provided in paragraph (b) of this section, the entry documentation required to secure the release of merchandise shall consist of the following:

(1) *Entry.* Customs Form 3461 (appropriately modified), except that Customs Form 7533 (appropriately modified), in duplicate, may be used in place of Customs Form 3461 for merchandise imported from a contiguous country. The form used shall be prepared in accordance with § 141.61(a)(1) of this chapter.

(2) *Evidence of the right to make entry.* Evidence of the right to make entry, as set forth in § 141.11 of this chapter.

(3) *Commercial invoice.* A commercial invoice, except that in those instances listed in § 141.83(d) of this chapter where a commercial invoice is not required, a pro forma invoice or other acceptable documentation listed in that section may be submitted in place of a commercial invoice.

(4) *Packing list.* A packing list, where appropriate.

(5) *Other documentation.* Other documents which may be required by Customs or other Federal, State, or local agencies for a particular shipment.

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry, in accordance with § 142.12(a)(1) or § 142.13.

(1) Customs Form 3461 or 7533 shall not be required, and

(2) Customs Form 7501, or 3311, as appropriate (see § 142.11), shall serve as both the entry and the entry summary documentation if the additional documentation set out in paragraphs (a)(2), (3), (4), and (5) of this section and § 142.16(b) is filed.

(c) *Extra copies.* The district director may require additional copies of the documentation.

§ 142.3a Entry numbers.

(a) *Placement on Customs Forms.* The importer or broker shall place an 11 character entry number on the entry and corresponding entry summary documentation. For documentation prepared on data processing equipment, the number shall be printed directly on the form. For manually prepared documentation, the number shall be pre-printed in a machine readable format specified by Customs. The same number shall not be used for more than one entry transaction.

(b) *Format.* The following format, including hyphens, must be used when showing the entry number:

XXX–NNNNNNN–N

XXX represents an entry filer code assigned by Customs, NNNNNNN is a unique number which is assigned by the broker or importer, and N is a check digit computed from the first 10 characters based on a formula provided by Customs.

(1) *Assignment of Entry Filer Code.* Customs will assign a unique 3 character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed brokers filing Customs entries. Customs will assign an entry filer code to certain importers filing Customs entries based on importer entry volume, frequency of entry filing, and other considerations. The broker or importer shall use this assigned code as the beginning three characters of the number for all Customs entries, regardless of where the entries are filed.

(2) *Entry Filer Assigned Number.* For each entry, the broker or importer shall assign a unique 7 digit number. This number shall not be assigned to more than one transaction.

(3) *Check Digit.* The broker or importer is responsible for ensuring that the check digit is computed by data processing equipment.

(c) *Misuse of the Entry Filer Code.* The district director may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker.

(d) *Alternative Procedure.* If an importer does not have an assigned entry filer code, or if the district director, in accordance with paragraph (c) of this section refuses to allow use of an assigned entry filer code, the importer or broker shall obtain forms with a Customs assigned pre-printed machine readable entry number with a computed check digit. These forms will be available for sale by Customs and must be obtained and used before the merchandise may be released from Customs custody. **[TDs 85–112, 86–106.]**

§ 142.4 Bond requirements.

(a) *At the time of entry.* Except as provided in § 10.101(d) of this chapter or paragraph (c) of this section, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by § 142.3, unless a single entry or continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, executed by an approved corporate surety, or secured by cash deposits or obligations of the U.S., as provided for in § 113.40 of this chapter, has been filed. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *If entry summary is filed after entry.* (1) Except as provided in § 141.102(d) of this chapter, if the entry summary is filed after the entry, bond filed at the time of entry, as required by paragraph (a) of this section or by § 142.19, shall continue to be obligated unless a superseding bond is filed, as provided in § 141.20 of this chapter, or unless a bond of the type described in paragraph (a) of this section is filed under the circumstances described in paragraph (b)(2) of this section. If a superseding bond is filed, or if a bond is filed under the circumstances described in paragraph (b)(2) of this section, the obligations of the initial bond shall be terminated as to any liability which may accrue after the superseding or other bond becomes effective.

(2) If entry is made in the name of an agent, supported by the agent's bond, or in the name of a principal, supported by the principal's bond, and the entry summary thereafter is filed in the name of the other party, the party named in the entry summary shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. In this circumstance, the bond obligation of the party in whose name entry was made shall be terminated, as to liability which may accrue after the bond filed by the party named in the entry summary becomes effective, and the party filing the entry summary need not file the separate declaration of the actual owner and the superseding bond otherwise required under § 141.20 of this chapter.

(c) *Waiver of surety or cash deposit.* (1) The district director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which the bond secures does not exceed $2,500, (ii) the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise and (iii) the importer has not been delinquent or otherwise remiss in any transaction with Customs. (2) This authority is waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the district director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the district director based on past experience, as question of redelivery. **[TDs 74–227, 77–23, 84–213, 85–161.]**

§ 142.5 Reserved [TD 84–213.]

§ 142.6 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(1) An adequate description of the merchandise.

(2) The quantities of the merchandise.

(3) The values or approximate values of the merchandise.

(4) The appropriate eight-digit subheading from the Harmonized Tariff Schedule of the United States. If the importer is uncertain of the appropriate subheading number, Customs shall assist him at his request. The district director may waive this requirement if he is satisfied that the information is not available at the time release of the merchandise is authorized.

(b) *Information not required when filing entry.* In addition to the information specified in paragraph (a) of this section, the commerical invoice or substitute document filed with the entry documentation also may include any other invoice information required by §§ 141.86 through 141.89 of this chapter. However, if this information does not appear on the invoice or substitute document filed with the entry documentation, it shall be included in the invoice or substitute document delivered at the time the entry summary documentation is filed. **[TD 89–1.]**

§ 142.7 Examination of merchandise.

No merchandise for which the entry documentation required by § 142.3 has been filed shall be released until it

has been examined, or until adequate samples have been taken in the case of merchandise which is to be classified and appraised by means of samples, unless this requirement is waived by the district director in accordance with § 499, Tariff Act of 1930, as amended (19 U.S.C. 1499).

§ 142.8 Failure to file entry timely.

Merchandise for which timely entry is not filed as required by § 142.2 shall be treated in accordance wtih § 4.37 and Part 127 of this chapter.

Subpart B—Entry Summary Documentation

§ 142.11 Entry summary form.

(a) *Customs Form 7501.* The entry summary shall be on Customs Form 7501 unless a different form is prescribed elsewhere in this chapter. Customs Form 7501 shall be used for merchandise formally entered for consumption, formally entered for warehouse, or rewarehouse in accordance with § 144.11 of this chapter, and formally entered temporarily under bond under § 10.31 of this chapter. The entry summary for merchandise which may be entered free of duty in accordance with § 10.1 (g) or (h) of this chapter may be on Customs Form 3311 instead of on Customs Form 7501. For merchandise entitled to be entered under an informal entry, see § 143.23 of this chapter. **[TD 84-129, 84-213.]**

(b) *Extra copies.* The district director may require additional copies of the entry summary.

§ 142.12 Time for filing or submission for preliminary review.

(a) *At option of importer ——— (1) Filing.* Except as provided in § 142.13, the importer may file the entry summary documentation at the time of entry in which case the entry summary, with estimated duties attached, shall serve as both the entry and the entry summary.

(2) *Submission for preliminary review.* If the importer intends to file the entry summary documentation at the time of entry, he may submit the entry summary documentation for preliminary review before arrival of the merchandise, in accordance with § 141.63(a) of this chapter. After preliminary review is completed, the entry summary shall be returned to the importer for filing in accordance wtih paragraph (a)(1) of this section.

(b) *When required.* If the importer is not required to file the entry summary documentation at the time of entry under the provisions of § 142.13, or if he does not elect to do so, the entry summary documentation shall be filed, with estimated duties attached, within 10 working days after the time of entry.

(c) *Estimated duties.* Estimated duties, if any, shall be deposited in accordance with the provisions of Subpart G of Part 141 of this chapter.

§ 142.13 When entry summary must be filed at time of entry.

(a) *Authority of district director.* The district director may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer:

(1) Has failed repeatedly to file timely entry summary documentation without justification,

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.15 for failure to file entry summary documentation timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages, shall petition for relief or pay the amount, claimed and, in appropriate cases, file the entry summary documentation and deposit estimated duties, if any, or

(3) Has repeatedly delivered entry summary documentation, which is incomplete or which contains erroneous information.

(b) *Authority of regional commissioner.* The regional commissioner may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer is substantially or habitually delinquent in the payment of Customs bills. See § 142.14.

(c) *Special classes of merchandise.*—(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of an entry summary for consumption, with estimated duties attached, or a withdrawal for consumption, with estimated duties attached. (See Part 132 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, shall be filed at the time of entry before release of any other merchandise of a class designated by Headquarters.

(d) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for release of the importer's merchandise in the brokers's name and under the broker's bond.

§ 142.14 Delinquent payment of Customs bills.

The following procedure shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that he shall file the entry summary documentation with estimated duties attached, before his merchandise may be released from Customs custody in that region. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, he shall be required to file the entry summary document with estimated duties attached, before his merchandise may be released in any Customs region. In either case, the entry summary shall serve as both the entry and the entry summary.

(b) *Removal or requirement by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the requirement shall be removed, and the importer need file only the entry documentation specified in § 142.3 to secure release of his merchandise.

(c) *Removal of requirement by Headquarter.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, he also shall be required to file the entry summary documentation, with estimated duties attached, in each Customs region. In this case, the entry summary shall serve as both the entry and the entry summary. This requirement shall remain in effect

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in each port of entry until notification is received from Headquarters that the requirement is removed and that the importer need submit only the entry documentation listed in § 142.3 to secure release of his merchandise.

§ 142.15 Failure to file entry summary timely.

If the entry summary documentation is not filed timely, the district director shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application to cancel liquidated damages incurred shall be made in accordance with Part 172 of this chapter. **[TD 84-213.]**

§ 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry.* When the entry documentation is filed before the entry summary documentation, one copy of the entry document and the commercial invoice, or the documentation filed in place of a commercial invoice in the instances listed in § 141.83(d) of this chapter, shall be returned to the importer after Customs authorizes release of the merchandise. The importer may use these documents in preparing the entry summary, Customs Form 7501, and shall file them with the entry summary documentation within the time period stated in § 142.12(b). The entry summary documentation also shall include any other documents required for a particular shipment unless a bond for missing documents is on file, as provided in § 141.66 of this chapter. **[TD 84-129.]**

(b) *Entry summary filed at time of entry.* When the entry summary documentation is filed at time of entry, the documentation listed in § 142.3 shall be filed at the same time, except that Customs Form 3461 or 7533 shall not be required. The importer also shall file any additional invoice required for a particular shipment. **[TD 84-129.]**

§ 142.17 One entry summary for multiple entries.

(a) *Requirements.* Except as provided in paragraph (b) of this section, the district director may permit the filing of one entry summary for merchandise the subject of separate entries if:

(1) The merchandise has the same country of exportation, and the same country of origin,

(2) The merchandise arrives by land, by the same vessel or by the same air carrier,

(3) The merchandise is consigned to the same consignee,

(4) The time between the date of the first entry and the date of the last entry does not exceed 1 week,

(5) The entry summary document is filed within 10 working days from the date of the first entry, and

(6) Each entry is identified separately by entry number on the entry summary.

(b) *Merchandise not eligible.* One entry summary shall not be used for multiple entries of the following:

(1) Quota-class merchandise,

(2) Prohibited merchandise,

(3) Merchandise subject to restrictions which required processing and documentation more frequently than on a weekly basis,

(4) Merchandise for which liquidation has been withheld, and

(5) Merchandise classifiable under the same Harmonized Tariff Schedule of the United States subheading number to the eight-digit level having different rates of duty for which entries or immediate transportation entries have been filed. However, this provision is not applicable in the following circumstances:

(i) *Entries.* Entries may be consolidated if the time of entry is—

(A) Before the date of change in rate of duty, or

(B) On or after the date of change in rate of duty.

(ii) *Immediate transportation entries.* Immediate transportation entries may be consolidated if the date of acceptance is—

(A) Before the date of change in the rate of duty, or

(B) On or after the date of change in rate of duty.

(c) *Entry documentation not in proper form.* If an entry summary covering multiple entries refers to entry documentation which is not in proper form, the entry summary and the entry documentation shall be returned for correction. **[TD 88-79.]**

§ 142.17a One consolidated entry summary for multiple ultimate consignees.

(a) *Applicability.* The district director may permit a broker as nominal consignee to file a consolidated entry summary in his own name under his own bond covering shipments of like or similar merchandise consigned to various ultimate consignees provided that all the merchandise is—

(1) Imported on the same day,

(2) Itemized as to each category of merchandise by Harmonized Tariff Schedule of the United States Annotated subheading to the ten-digit level, and

(3) Released on the same day, either under the entry documentation specified in § 142.3, or under a special permit for immediate delivery. A consolidated entry summary may be filed for merchandise arriving by land, by the same vessel, or by the same air carrier.

(b) *Information required on the entry summary*—(1) *Separate listing according to ultimate consignee.* The broker shall list separately on the face of the consolidated entry summary the merchandise for each ultimate consignee, together with the appropriate entry or special permit numbers.

(2) *If different land carriers are involved.* If merchandise arriving by different land carriers is included on one entry summary, necessary information pertaining to each carrier shall be shown on the face of the entry summary, related to the applicable shipment. **[TD 89-1.]**

§ 142.18 Entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released at time of entry is later found to be prohibited, the district director shall demand its return to Customs custody in accordance with § 141.113 of this chapter, and an entry summary and the deposit of estimated duties, if any, shall not be required provided:

(1) An entry for exportation, Customs Forms 7512, or for application to destroy the merchandise under Customs supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, Customs Form 7512, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise as required by paragraph (a) shall be in accordance with §§ 158.41 and 158.45(c) of this chapter.

§ 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from Customs custody until a bond has been filed, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if a bond is filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Merchandise designated for examination may be released under the bond after examination has been completed if:

(1) It has been found to be truly and correctly invoiced,

(2) It is entitled to admission into the commerce of the U.S., and

(3) Its release is not precluded by any law or regulation. If merchandise is entered by or on behalf of a U.S. Government department or agency, the stipulation prescribed in § 141.102(d) of this chapter shall be accepted in place of a bond.

(b) *After liquidation.* If a bond has not been filed in accordance with paragraph (a) of this section, the merchandise shall not be released before:

(1) The entry has been liquidated and the full amount of all duties and taxes due, including dumping or other special duties and charges, has been paid, or the right to free entry established.

(2) The district director determines that the merchandise may be admitted into the commerce of the U.S., and

(3) All documents relating to the merchandise which are required by law or regulation have been filed. **[TD 84-213.]**

Subpart C—Special Permit for Immediate Delivery

§ 142.21 Merchandise eligible for special permit for immediate delivery.

Merchandise may be released under a special permit for immediate delivery, in accordance with § 448(b), Tariff Act of 1930, as amended (19 U.S.C.1448(b)), in the following circumstances:

(a) *Contiguous countries.* At the discretion of the district director, merchandise arriving by land from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be filed in accordance with § 142.22(b)(1), and estimated duties, if any, shall be deposited, within the time period specified in § 142.23 for all merchandise from contiguous countries released under a special permit except for fresh fruits and vegetables for human consumption released under the provisions of paragraph (b) of this section. **[TDs 76-220, 76-246, 84-213.]**

(b) *Fresh fruits and vegetables.* (1) An application for a special permit for immediate delivery may be made for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border.

(2) The application shall be accompanied by a continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. **[TD 84-213.]**

(c) *Agency of U.S. Government.* Merchandise may be released under the immediate delivery procedure if the shipment is consigned to or for the account of any agency or office of the U.S. Government, or to an officer or official of any such agency in his official capacity, as provided in § 10.101 of this chapter.

(d) *Articles of a trade fair.* Articles for a trade fair may be released under the immediate delivery procedure, as provided in § 147.13 of this chapter.

(e) *Quota-class merchandise.*—(1) *Tariff-rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary, with estimated duties attached, shall be presented within the time specified in § 142.23, or within the quota period, whichever expires first. If the entry summary, with estimated duties attached, is presented after the tariff rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall deposit duties at the over-quota rate. **[TD 84-213.]**

(2) *Absolute.* At the discretion of the district director, perishable merchandise of a class approved by Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the district director, until an entry summary, with estimated duties attached, is presented. An entry summary, with estimated duties attached, shall be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has presented an entry summary, with estimated duties attached, he either may present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit—

(1) At the discretion of the district director when

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse may not be affected within the next full business day after the day of the payment of duty, and

(ii) The district has sufficient manpower to permit such practice;

(2) The importer shall have on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, and

(3) The immediate delivery permit shall be annotated to state that a withdrawal for consumption will be filed for this merchandise. **[TDs 81-260, 84-213.]**

(g) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), and (f) of this section provided a bond on Customs Form 301, containing

the bond conditions set forth in § 113.62 of this chapter is on file. [TD 84-213.]

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery shall be made on Customs Form 3461 supported by the documentation provided for in § 142.3, except that a commercial invoice shall not be required. Instead of a commercial invoice, the importer may deliver to Customs a pro forma invoice, waybill, or other document setting forth an adequate description of the merchandise and the quantities, together with the values or approximate values when values are needed for the purpose of examination. If the merchandise is to be released under a term special permit, the documentation also shall show the term special permit number, as provided for in § 142.24.

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under § 142.21 of this part shall be considered to remain in Customs custody until the filing of one of the following;

(1) An entry summary for consumption, with estimated duties attached, an entry summary for warehouse, or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under § 142.21(f) of this part;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under § 142.21(b) and (e)(2) of this part; or entry for transportation and exportation, or direct exportation, which shall be filed in circumstances under § 142.28 of this part or

(4) An application to destroy, which shall be filed in those circumstances under §§ 142.21(b) and (e)(2), and § 142.28 of this part. [TD 81-260.]

§ 142.23 Time limit for filing documentation after release.

The applicable documentation described in § 142.22(b) shall be filed, and estimated duties, if any, shall be deposited, within 10 working days after the merchandise or any part of the merchandise is authorized for release under a special permit for immediate delivery or, for quota class merchandise, within the quota period, whichever expires first.

§ 142.24 Special permit.

(a) *Conditions for issuance.* At the discretion of the district director, a special permit for immediate delivery may be issued on Customs Form 3461, appropriately modified, for a class or classes of merchandise particularly described in the application for the permit.

(b) *Notation of value for each shipment.* When applying for the release of a shipment of merchandise under a special permit for immediate delivery, the importer shall note a value for the shipment on the documentation presented. The value so noted shall not be less than the invoice value.

§ 142.25 Discontinuance of immediate delivery privileges.

(a) *Authority of district director.* The district director may discontinue immediate delivery privileges if the importer:

(1) Has failed repeatedly to file the applicable Customs documentation set forth in § 142.22(b) timely without justification, or

(2) Has not taken prompt action to settle a claim for liquidation damages issued under § 142.27 for failure to file the application Customs documentation set forth in § 142.22(b) timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages shall petition for relief or pay the amount claimed and, file the applicable documentation and deposit estimated duties, if any.

(3) Has repeatedly delivered documentation required by § 142.22(b) which is incomplete or which contains erroneous information.

(b) *Authority of regional commissioner.* The regional commissioner may discontinue immediate delivery privileges if the importer is substantially delinquent in the payment of Customs bills. See § 142.26.

(c) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for the immediate release of the importer's merchandise in the broker's name and under the broker's bond.

§ 142.26 Delinquent payment of Customs bills.

The following procedures shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills: [TD 76-78.]

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that his immediate delivery privileges have been suspended in that region. The notice shall state the reason for the action and advise the importer that if payment of all his deliquent Customs bills is not made within 10 working days from the date of the notice, the importer's immediate delivery privileges also shall be suspended in all Customs regions. [TD 76-78.]

(b) *Reinstatement of privileges by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the suspension shall be removed, and the importer's immediate delivery privileges shall be reinstated. [TD 76-78.]

(c) *Reinstatement of privileges by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, his immediate delivery privileges shall be suspended in all Customs regions. This suspension shall remain in effect in each port of entry until notification is received from Headquarters that the suspension is removed and that the importer's immediate delivery privileges have been reinstated. [TD 76-78.]

§ 142.27 Failure to file documentation timely.

If the applicable Customs documentation set forth in § 142.22(b) is not filed within the time provided in § 142.23, the district director shall make an immediate demand for liquidated damages in the amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any

application for cancellation of liquidated damages incurred shall be made in accordance with Part 172 of this chapter.

§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If the merchandise released under a special permit for immediate delivery later is found to be prohibited, the district director shall demand its recall in accordance with § 141.113 of this chapter (applicable to the recall of merchandise released from Customs custody), and withdrawal or entry summary documentation and the deposit of estimated duties, if any, shall not be required provided:

(1) the merchandise is exported or destroyed under Customs supervision within the time limit for entry specified in § 142.23, or

(2) An entry for exportation or for transportation and exportation on Customs from 7512, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise required by paragraph (a) of this section shall be under the same procedures as exportation or destruction of prohibited merchandise covered by a consumption entry with remission or refund of duties. See §§ 158.41 and 158.45(c) of this chapter.

(c) *Notation on exportation entry.* An entry for exportation or for transportation and exportation of prohibited merchandise for which no entry summary for consumption has been filed shall be stamped or imprinted conspicuously with the legend:

Prohibited Merchandise, No Other Entry Filed

§ 142.29 Other procedures applicable.

Merchandise released under a special permit for immediate delivery shall be subject to the same procedures applicable to all other imported merchandise, unless specific procedures are set forth in this subpart.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

Sec.

143.0 Scope.

Subpart A—Consumption Entry [Reserved.]

Subpart B—Appraisement Entry

143.11 Merchandise eligible for appraisement entry.
143.12 Form of entry.
143.13 Documents to be presented with entry.
143.14 Payment of additional expenses.
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143.16 Substitution of warehouse entry.

Subpart C—Informal Entry

143.21 Merchandise eligible for informal entry.
143.22 Formal entry may be required.
143.23 Form of entry.
143.24 Preparation of Customs Form 7501 and Customs Form 5119–A.
143.25 Information on entry form.
143.26 Additional copy for Internal Revenue.
143.27 Invoices.
143.28 Deposit of duties and release of merchandise.
143.29 Special informal entry procedures for cargo transported by courier and express air services.

Authority: R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 729; 19 U.S.C. 66, 1484, 1498, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73–175, 38 FR 17463, July 2, 1973, unless otherwise noted.

§ 143.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise under consumption, appraisement, and informal entries, which are in addition to the general requirements and procedures for all entries set forth in Part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, in Part 145 for importations by mail, and in Part 10 for merchandise conditionally free of duty or subject to a reduced rate. **[TD 73–175.]**

Subpart A—Consumption Entry [Reserved]

Subpart B—Appraisement Entry

§ 143.11 Merchandise eligible for appraisement entry.

(a) *Without Commissioner's approval.* An application for entry by appraisement may be approved by the district director without securing the approval of the Commissioner of Customs for any of the following merchandise:

(1) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(2) Merchandise recovered from a wrecked or stranded vessel;

(3) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(4) Articles sent by persons in foreign countries as gifts to persons in the U.S.;

(5) Tools of trade of a person arriving in the U.S.;

(6) Personal effects of citizens of the U.S. who have died in a foreign country; and

(7) Any of the following articles, which are deemed in accordance with section 498(a)(10), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(10)), to be articles the value of which cannot be declared:

(i) Articles which are secondhand;

(ii) Articles which have become deteriorated or damaged before importation otherwise than as specified in subparagraph (1) of this paragraph;

(iii) Articles which are not the subject of a commercial transaction; and

(iv) So-called overages or dock accumulations which cannot be identified with any particular shipment.

(b) *With Commissioner's approval.* Entry by apraisement for merchandise not provided for in paragraph (a) of this section shall be allowed only with the approval of the Commissioner of Customs. Each request for such approval shall be filed in triplicate with the district director and shall state in detail the reasons for the request for entry by appraisement.

(c) *Merchandise not eligible.* An application for an entry by appraisement shall not be approved after the merchandise has been appraised or released from Customs custody, nor for damaged merchandise when the damage occurs after importation.

§ 143.12 Form of entry.

Application for an entry by appraisement shall be made in triplicate on the entry summary Customs Form 7501.

§ 143.13 Documents to be presented with entry.

The importer shall in all cases present:

(a) Any bills or statements of cost relating to the merchandise which may be in his possession; and

(b) A declaration that he has no other information as to the value of the articles and is unable to obtain such information or to determine the value of the articles for the purpose of making formal entry thereof.

§ 143.14 Payment of additional expenses.

Any additional expenses for cartage, storage, or labor occasioned by reason of an entry by appraisement shall be borne by the importer.

§ 143.15 Deposit of estimated duties and taxes.

Estimated duties shall be deposited in accordance with subpart G of Part 141 of this chapter before the merchandise is released from Customs custody.

§ 143.16 Substitution of warehouse entry.

The importer may substitute an entry for warehouse at any time within 1 year from the date of importation, provided the merchandise has remained in continuous Customs custody.

Subpart C—Informal Entry

§ 143.21 Merchandise eligible for informal entry.

The following types of merchandise are among those which may be entered under informal entry (see sections 141.52 and 143.22 of this chapter) **[TDs 84–171, 85–38.]**

(a) Shipments of merchandise not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS); **[TDs 85–123, 88–79.]**

(b) Any installment, not exceeding $1,000 in value, of a shipment arriving at different times, as described in § 141.82 of this chapter; **[TD 85–123.]**

(c) A portion of one consignment, when such portion does not exceed $1,000 in value and may be entered separately pursuant to § 141.51 of this chapter. This paragraph does not apply to shipments of articles valued in excess of $250 classified under subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS;

(d) Household or personal effects or tools of trade entitled to free entry under Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202);

(e) Household effects used abroad and personal effects whether or not entitled to free entry, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(f) Household and personal effects described in paragraph (e) of this section when entered under subheading 9802.00.40, HTSUS the value of the repairs and alterations thereto does not exceed 1,000;

(g) Personal effects not exceeding $1,000 in value of citizens of the U.S. who have died abroad;

(h) Books and other articles classifiable under subheadings 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, HTSUS (19 U.S.C. 1202), imported by a library or other institution described in subheadings 9810.00.05 and 9810.00.30, HTSUS (19 U.S.C. 1202); **[TDs 76–145, 89–1.]**

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments, and tools of trade, occupation, or employment, as set forth in § 10.68 of this chapter;

(j) Merchandise which, upon written application to the Commissioner of Customs, is determined to be so unique in character or design that the value thereof cannot be declared and which is not intended for sale or imported in pursuance of a purchase or agreement for purchase; and **[TD 75–41, 40 FR 6646, February 13, 1975, 75–241, 82–116, 83–82, 85–123.]**

(k) Products of the U.S., when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the U.S. for credit.

(l) Cargo transported by courier and air express services not exceeding $1,000 in value, with the exception of prohibited and restricted merchandise, merchandise subject to quota or quantitative restraints, or in any instance in which the district director may require formal entry under § 143.22 of this Part. (See § 143.29 of this part.) **[TD 86–143.]**

§ 143.22 Formal entry may be required.

The district director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes. (b) revenue protection, or (c) the efficient conduct of Customs business. Individual shipments for the same consignee, when such shipments are valued at $1,000 or less, may be consolidated on one such entry. **[TDs 84–171, 85–38, 85–123.]**

§ 143.23 Form of entry.

Except for the types of merchandise listed below which may be entered on the forms indicated, merchandise to be entered informally shall be entered on a Customs Form 5119–A (serially numbered) or Customs Form 7501, or, if authorized by the district director, upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent: **[TDs 75–105, 87–75.]**

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(a) Articles in passengers' baggage which may be cleared on a baggage declaration in accordance with subpart B of Part 148 of this chapter;

(b) Products of the U.S. being returned for which clearance on Customs Form 3311 is prescribed by § 10.1 of this chapter;

(c) Personal effects and tools of trade for which clearance on Customs Form 3299 is prescribed by § 148.6 of this chapter; and

(d) Shipments not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapter III and IV, Harmonized Tariff Schedule of the United States) which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on Customs Form 7523, in duplicate, supported by evidence of the right to make entry. **[TDs 80–10, 85–123, 89–1.]**

(e) Merchandise for which informal entry can be made on a different form as prescribed elsewhere in this chapter.

(f) Merchandise released under the immediate delivery procedure or the entry documentation required by section 142.3(a), and entry is made on Customs form 7501, annotated "Informal entry" in the upper right hand corner. **[TDs 76–213, 79–221.]**

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the Generalized System of Preferences (see § 10.171–10.178 of this chapter), and for which informal entry may be made on Customs Form 7523, in duplicate. **[TD 80–10.]**

(h) Products of the U.S. being returned for which informal entry is permitted by § 143.21(j) may be cleared as follows:

(1) For products of the U.S. returned for the purposes of repair or alteration prior to reexportation, Customs Form 3311 will serve as informal entry.

(2) For products of the U.S. after having been either rejected or returned by the foreign purchaser for credit, Customs Form 7501, annotated "informal entry" in the upper right hand corner, and Customs Form 3311 will serve as informal entry. **[TD 83–82.]**

§ 143.24 Preparation of Customs Form 7501 and Customs Form 5119–A (serially numbered).

Customs Form 7501 may be prepared by importers or their agents or by Customs officers when it can be presented to a Customs cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier, Customs Form 5119–A (serially numbered) or Customs Form 7501 must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importer or agent for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with Part 142 of this chapter. **[TDs 76–213, 84–129, 87–75.]**

§ 143.25 Information on entry form.

Each Customs Form 5119–A (serially numbered) or, where used, Customs Form 7501 shall contain an adequate description of the merchandise and the item number of the Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202), under which the merchandise is classified. **[TDs 76–213, 87–75, 88–79.]**

§ 143.26 [Reserved] [TDs 76–213, 78–329.]

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value. **[TD 85–39.]**

§ 143.28 Deposit of duties and release of merchandise.

The estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs officer, whether at the customhouse or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the merchandise by Customs. When the entry is presented elsewhere than where the merchandise is to be examined, the permit copy shall be delivered through proper channels to the Customs officer who will examine the merchandise.

§ 143.29 Special informal entry procedures for cargo transported by courier and express air services.

This procedure is available for accompanied or air shipments not exceeding $1,000 in value imported by courier and express air services, with the exception of prohibited and restricted merchandise, merchandise subject to quota or quantitative restraints, or in any instance in which the district director may require formal entry under § 143.22 of this part.

(a) *Shipments valued at $250 or less.* To obtain expedited clearance under this section, the party with the right to file entry shall submit a copy of the invoice or advance manifest containing necessary information including name and address of the shipper, name and address of the consignee, value of the merchandise, country of origin of the merchandise, and description of the merchandise. The completed invoice or advance manifest will be accepted by Customs in lieu of a Customs Form 3461 (Application for Special Permit for Immediate Delivery), or Customs Forms 7501 or 5119 (Informal Entry), as the entry control document.

(b) *Shipments valued in excess of $250 and not exceeding $1,000.* In addition to the information required on the documentation specified in paragraph (a) of this section, the appropriate item number from the Harmonized Tariff Schedule of the U.S., must be furnished for classification purposes.

(c) If an adverse manifest is used as the entry document, shipments valued in excess of $5.00 must be segregated from those valued at $5.00 or less.

(d) Within 10 days of the filing of the entry, the Entry Summary (Customs Form 7501) must be presented, in proper form, with estimated duties attached.

(e) An Application for Special Permit for Immediate Delivery (Customs Form 3461), appropriately modified to cover all importations under the special procedures provided in this section for a period of 1-year, shall be submitted to the district director before the procedure permitted by this section shall be commenced by the courier or air express service.

(f) *Centralized courier facilities.* At airports with high volumes of accompanied courier traffic at a central facility with numerous couriers and their brokers, the district director may require an individual Application for Special Permit for Immediate Delivery (Customs Form 3461), from the brokers representing each courier and covering the various eligible shipments per day or per flight. The commercial invoices or advance manifests will be attached to the Customs Form 3461 which will contain the entry number and other necessary information. In lieu of a description of the merchandise, a notation will be inserted indicating that the entry covers multiple shipments in accordance with this section. **[TDs 86–143, 89–1.]**

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Sec.

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Authority: R.S. 251, as amended, secs. 484, 557, 559, 624, 46 Stat. 722, as amended, 744, as amended, 759; 19 U.S.C. 66, 1484, 1557, 1559, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73-175, 38 FR 17464, July 2, 1973, unless otherwise noted.

§ 144.0 Scope.

This part contains regulations pertaining to the entry and withdrawal of merchandise under the provisions of § 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), which among other things provides that articles subject to duty may be entered for warehousing and deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee, and withdrawn from warehouse for consumption upon payment of duties and charges. The requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in Part 141 of this chapter. Regulations pertaining to manipulation in warehouse, manufacturing warehouses, and smelting and refining warehouses are set forth in Part 19 of this chapter. **[TD 73-175.]**

Subpart A—General Provisions

§ 144.1 Merchandise eligible for warehousing.

(a) *Types of merchandise.* Any merchandise subject to duty may be entered for warehousing except for perishable merchandise and explosive substances (other than firecrackers). **[TD 84-149.]**

(b) Reserved **[TD 82-204.]**

(c) *Merchandise previously entered.* If merchandise has been entered under other than a warehouse entry and has remained in continuous Customs custody, a warehouse entry may be substituted for the previous entry. If estimated duties were deposited with the superseded previous entry, that entry shall be liquidated for refund of the estimated duties without awaiting liquidation of the warehouse entry. All copies of the warehouse entry shall bear the following notation: This entry is in substitution of _____ entry No. _____, dated _____.

§ 144.2 Liability of importers and sureties.

The importer of merchandise entered for warehouse is liable for the payment of all unpaid duties not only as principal on the bond filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, but also by reason of his personal liability as consignee. Under the conditions of the bond, the sureties on the bond shall be held liable for the payment of duties and Customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from Customs custody or thereafter. Liability may be transferred in part along with the right to withdraw the merchandise, in accordance with Subpart C of this part. **[TD 84-213.]**

§ 144.3 Allowance for damage.

No abatement or allowance of duties shall be made on account of damage, loss, or deterioration of the merchandise while in warehouse, except as provided for by law (see Part 158 of this chapter). (Sec. 563, 46 Stat. 746, as amended; 19 U.S.C. 1563)

§ 144.4 Allowance for abandoned, destroyed, or exported merchandise.

Allowance in duties shall be made for merchandise in warehouse which is abandoned or destroyed in accordance with § 158.43 of this chapter or exported in accordance with § 144.37.

§ 144.5 Period of warehousing.

Merchandise shall not remain in a bonded warehouse beyond 5 years from the date of importation. **[TDs 79-221, 86-118.]**

§ 144.6 [Reserved.] [TD 79-221.]

§ 144.7 Disposition of merchandise after expiration of warehousing period.

Merchandise remaining in a bonded warehouse after the expiration of the warehousing period shall be disposed of in accordance with § 127.14 of this chapter. [TDs 78-199, 79-221.]

Subpart B—Requirements and Procedures for Warehouse Entry

§ 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the entry summary, Customs Form 7501, is filed at the time of entry for merchandise to be entered for warehouse, it shall serve as both the entry and the entry summary, and Customs Form 3461 or 7533 shall not be required. If the entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If merchandise is released before the filing of the entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7501.* The entry summary for merchandise entered for warehouse shall be executed in triplicate on Customs Form 7501, appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7501, annotated "PERMIT" for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse.* The importer shall designate on the entry summary, Customs Form 7501, the bonded warehouse in which he desires his merchandise deposited. [TDs 73-312, 76-82, 79-221, 84-129.]

(d) *Specification list.*—When packages which are not uniform in contents, quantities, values, or rates of duties are grouped together as one item on an entry summary, a specification list (original only) shall be furnished with the entry summary, showing separately opposite the marks or numbers of each package, the quantity of each class of merchandise, the entered value of each class, and the rates of duty claimed for each. However, a specification list is not needed if one withdrawal is to be filed for all the merchandise covered by the entry summary. [TD 79-221.]

§ 144.12 Contents of entry summary; estimated duties.

The entry summary, Customs Form 7501, shall show the value, classification, and rate of duty as approved by the district director at the time the entry summary is filed. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption. [TD 79-221.]

§ 144.13 Bond requirements.

A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed in the amount required by the district director to support the entry documentation. [TDs 79-221, 84-213.]

§ 144.14 Removal to warehouse.

When the entry summary, Customs Form 7501, and the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter have been filed, the merchandise shall be sent to the bonded warehouse, except for: [TD 84-213.]

(a) Merchandise for which an immediate dock withdrawal is filed, or [TD 79-221.]

(b) Packages designated for examination elsewhere than at the warehouse, which shall be sent to the warehouse after examination. [TD 79-221.]

§ 144.15 Entry and withdrawal from Customs bonded warehouses of distilled spirits.

(a) *Distilled spirits entered in warehouse under § 5066(a), Internal Revenue Code*—(1) *General rule.* Except as otherwise provided in this section, distilled spirits entered into Customs bonded warehouse in accordance with § 5066(a), Internal Revenue Code, as amended (26 U.S.C. 5066(a)), shall be treated in the same manner as any other merchandise entered for warehouse. [TD 78-298.]

(2) *Withdrawal from warehouse for domestic consumption.* Distilled spirits entered in warehouse under this paragraph may be withdrawn from warehouse for domestic consumption under § 5066(c), Internal Revenue Code, as amended (26 U.S.C. 5066(c)). In this case, the distilled spirits shall be subject to duty as American goods exported and returned under subheading 9801.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). [TD 89-1.]

(b) *Distilled spirits transferred from a manufacturing warehouse to a storage warehouse under § 311, Tariff Act of 1930, as amended*—(1) *Prohibition on withdrawal from warehouse for domestic consumption.* Domestic distilled spirits which have been transferred from a Customs bonded manufacturing warehouse, Class 6, to a Customs bonded storage warehouse, Class 2, in accordance with § 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), may not be withdrawn under § 5066(c) of the Internal Revenue Code, as amended (26 U.S.C. 5066(c)), for domestic consumption. [TD 80-271.]

(2) *Procedure governing transfer of distilled spirits from manufacturing warehouse to storage warehouse.* For procedure concerning the transfer of such distilled spirits from Customs bonded manufacturing warehouse, Class 6, to Customs bonded storage warehouse, see § 19.15(g)(2) of this chapter.

(c) *Distilled spirits entered under § 5214(a)(9), Internal Revenue Code*—(1) *General rule.* Distilled spirits may be entered into a Customs bonded storage warehouse under § 5214(a)(9), Internal Revenue Code, as amended (26 U.S.C. 5214(a)(9)), in the same manner as any other merchandise is entered for warehouse, unless otherwise provided in this section.

(2) *Withdrawal only for exportation.* Distilled spirits warehoused under § 5214(a)(9), Internal Revenue Code, may be withdrawn only for the purpose of exportation, either directly or after rewarehousing at the same or another port. The distilled spirits may not be withdrawn for domestic consumption.

Subpart C—Transfer of Right To Withdraw Merchandise From Warehouse

§ 144.21 Conditions for transfer.

Under the provisions of § 557(b) Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), the right to withdraw all or part of merchandise entered for warehouse may be transferred by appropriate endorsement on the withdrawal form, provided that the transferee files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Upon the deposit of the endorsed form, properly executed, and the transferee's bond with the Customs officer designated to receive such form and bond, the transferor and his sureties shall be relieved from all undischarged liability. [T.D. 84-213.]

§ 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7506 for merchandise to be withdrawn as vessel or aircraft supplies and equipment under § 10.60(b) of this chapter; or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportation, exportation, or transportation, and exportation, or

(c) Customs Form 7505 for (i) a duty paid warehouse withdrawal for consumption or (ii) withdrawal with no duty payment (diplomatic use).

§ 144.23 Endorsement in blank.

If the transferor wishes to do so, he may endorse the withdrawal form to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a withdrawal form so endorsed and otherwise fully executed may insert his own name in the blank space, deposit such form and his transferee's bond with the Customs officer designated to receive such form and bond, and thereby establish his right to withdraw the merchandise.

§ 144.24 Transferee's bond.

The transferee's bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter. [T.D. 84-213.]

§ 144.25 Deposit of forms.

Either the transferor or the transferee may deposit the endorsed withdrawal form and transferee's bond with the Customs officer designated to receive such form and bond.

§ 144.26 Further transfer.

The right of a transferee to withdraw the merchandise may not be revoked by the transferor but may be retransferred by the transferee.

§ 144.27 Withdrawal from warehouse by transferee.

At any time within the warehousing period, a transferee who has established his right to withdraw merchandise may withdraw all or part of the merchandise covered by the transfer by filing any authorized kind of withdrawal from warehouse in accordance with subpart D of this part.

§ 144.28 Protest by transferee.

(a) *Entries on or after January 12, 1971.* A transferee of merchandise entered for warehouse on or after January 12, 1971, shall have the right to file a protest under § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), to the same extent that such right would have been available to the transferor.

(b) *Entries prior to January 12, 1971.* A transferee of merchandise entered for warehouse prior to January 12, 1971, shall have no right to file a protest, except under the conditions set forth in § 557(b), Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), prior to the amendments made thereto by Public Law 91-685, effective January 12, 1971 (T. D. 71-55).

Subpart D—Withdrawals from Warehouse

§ 144.31 Right to withdraw.

Withdrawals from bonded warehouse may be made only by the person primarily liable for the payment of duties on the merchandise being withdrawn, i.e., the importer of record on the warehouse entry, the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with § 141.20 of this chapter, or the transferee if the right to withdraw the merchandise has been transferred in accordance with subpart C of this part. No new declaration of the consignee or agent is required.

§ 144.32 Statement of quantity; charges and liens.

(a) *On each withdrawal.* Each withdrawal filed shall have indicated thereon, preferably in the lower part of the left-hand margin if there is no space designated on the form for such information, a summary statement of the account to which it is related. The statement shall indicate: (1) The quantity (i.e., the number of outer containers, or tons, etc.) in the warehouse account before the withdrawal; (2) the quantity being withdrawn; and (3) the quantity remaining in warehouse after the withdrawal. The quantity in each instance may be shown as a cumulative total event though it may include a group of varied units such as boxes, cases, or cartons, and may consist of more than one commodity, such as distilled spirits, chinaware, etc.

(b) *Transferred merchandise.* When all or a portion of an original lot has been transferred to a new owner in accordance with subpart C of this part, each withdrawal by the transferee shall show only the quantity on hand in the transferee's name before the withdrawal, the quantity being withdrawn by the transferee, and the transferred quantity remaining in the warehouse after the withdrawal. The quantity retained by the original importer and the quantity transferred shall be treated as separate accounts.

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any

notice of lien filed by a carrier. If there are no charges or liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the application to withdraw shall be approved. **[TDs 82-204, 86-118.]**

§ 144.33 Minimum quantities to be withdrawn.

Unless by special authority of the Commissioner of Customs, merchandise shall not be withdrawn from bonded warehouse in quantities less than an entire bale, cask, box, or other package, or, if in bulk, in quantities less than 1 ton in weight or the entire quantity imported, whichever is smaller. (Sec. 562, 46 Stat. 745, as amended; 19 U.S.C. 1562)

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the district director, who shall issue an order for such transfer on Customs Form 6043. However, the district director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (See § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in § 19.6 of this chapter. **[TD 82-204.]**

(b) *At another port.* Merchandise may be transferred to a warehouse which is under the jurisdiction of another port by withdrawing the merchandise for transportation in accordance with § 144.36 and entering it for rewarehouse in accordance with § 144.41 upon arrival at destination. All charges shall be paid before merchandise is transferred from the warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses).

§ 144.35 Withdrawal of vessel and aircraft supplies and equipment.

Supplies and equipment for vessels and aircraft may be withdrawn from warehouse under the procedures set forth in this subpart and in §§ 10.59 through 10.65 of this chapter.

§ 144.36 Withdrawal for transportation.

(a) *Time limit.* Merchandise may be withdrawn from warehouse for transportation to another port of entry if withdrawal for consumption or exportation can be accomplished at the port of destination before the expiration of the warehousing period. **[TD 86-118.]**

(b) *Physical deposit in warehouse not needed.* All or any part of the merchandise covered by an entry summary, Customs Form 7501, may be withdrawn for transportation without deposit in a bonded warehouse and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive warehouse status pending examination. When any such merchandise not deposited in a warehouse is not forwarded under the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent and, upon his failure to do so, it shall be treated as unclaimed.

(c) *Form.* A withdrawal for transportation shall be filed on Customs Form 7512 in five copies, accompanied by Customs Form 7512-C. An extra copy or copies of the Customs Form 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies shall be required for use in furnishing the duty statement to the district director at destination. **[TD 84-212.]**

(d) *Information required.* In addition to the statement of quantity required by § 144.32, the Customs Form 7512 shall show the following information for the merchandise being withdrawn:

(1) The original entry number, date of entry, date of entry summary, and port at which filed; **[TD 79-221.]**

(2) The name of the consignee at the port of destination; **[TD 79-221.]**

(3) Any ascertained weight, gauge, or measure; **[TD 79-221.]**

(4) The entered value of the merchandise; **[TDs 73-312, 79-221.]**

(5) Estimated duties, if any; **[TDs 73-312, 79-221.]**

(6) A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable; and **[TDs 73-312, 79-221.]**

(7) The statistical information required by § 141.61(e) of this chapter. **[TD 79-221.]**

When the withdrawal is made after the merchandise has been rewarehoused, the rewarehouse entry number, date, and port at which filed also shall be shown. **[TD 79-221.]**

(e) *Duty on samples withdrawn.* The duty on any samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and a notation thereof made on the withdrawal form. No separate invoice or extract from the original invoice shall be required to cover such samples.

(f) *Forwarding procedure.* The merchandise shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1-18.8 of this chapter).

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign trade zone in zone-restricted status as provided in Part 146 of this chapter. **[TD 86-16.]**

(h) *Exportation.* A consignee of merchandise withdrawn for transportation who desires to export the merchandise upon arrival at destination shall so advise the district director at destination in writing. The district director shall then permit the exportation of the merchandise under Customs supervision in the same manner as a withdrawal for indirect exportation under § 144.37.

§ 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation shall be filed on Customs Form 7512 (Transportation Entry and Manifest of Goods Subject to Customs Inspection

and Permit) in 5 copies or on Customs Form 7506 (Warehouse Withdrawal Conditionally Free of Duty, and Permit) in 3 copies for merchandise being exported under cover of a TIR carnet, accompanied by Customs Form 7512–C (Transportation Entry and Manifest of Goods). Customs Form 7512 or Customs Form 7506 shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7512 or 7506 for use in connection with the delivery of merchandise to the carrier. **[TDs 73–312, 84–212.]**

(b) *Procedure for indirect exportation.*

(1) *Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) shall be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (§§ 18.1–18.8 of this chapter).

(2) *Splitting of shipments.* If any part of a shipment is not exported or if a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the customhouse shall be made on Customs Form 7512 for each portion, one copy to be sent to the discharging inspector and the other to the lading inspector to be used as report of exportation. The splitting up for exportation of shipments arriving under warehouse withdrawals for indirect exportation shall be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry shall be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock shall also be followed in applicable cases.

(3) *Conversion to withdrawal for consumption.* A withdrawal for indirect exportation may be converted to a withdrawal for consumption upon request to the district director at the port where the withdrawal for indirect exportation was made.

(c) *Exportation by mail.* Merchandise may be withdrawn from warehouse for exportation by mail in accordance with the provisions of Subpart F of Part 145 of this chapter.

(d) *Marks on packages.* The exportation shall be made under the original marks of importation. Port marks may be added by authority of the district director under Customs supervision. The original and port marks shall appear in all Customs papers pertaining to the exportation.

(e) *Weight, gauge, or measure.* Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of the original entry for warehouse, except as otherwise provided for by law. In any case, the district director may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary. **[TD 80–142.]**

(f) *Merchandise not laden.* Merchandise withdrawn for exportation but not laden shall be sent to general order unless other disposition is prescribed by the district director. (Sec. 562, 46 Stat. 745, as amended; 19 U.S.C. 1562)

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter. **[TD 86–16.]**

§ 144.38 Withdrawal for consumption.

(a) *Form.* Withdrawals for consumption of merchandise in bonded warehouses shall be filed on Customs Form 7505 (Warehouse Withdrawal for Consumption-Duty Paid), in triplicate, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. **[TD 73–312.]**

(b) [Reserved] **[TD 78–329]**

(c) *Information to be shown on withdrawal.* Each withdrawal shall show all information for which spaces are provided on the withdrawal form, and shall also show the separate value of each package and the total dutiable value of the merchandise being withdrawn. In the case of merchandise in packages which are uniform in kind, quantity, value, and duty, the number of each package to be withdrawn need not be shown on the withdrawal if the lowest and highest numbers in the number series of such packages are shown. In the case of merchandise subject to quota, or textiles and textile products subject to levels of restraint, the description shall reflect any correction thereof reported after the filing of the warehouse entry. Additionally, on each withdrawal of cigars, cigarettes, or cigarette papers or tubes subject to internal revenue tax, the statement for tax purposes required by § 275.81 of the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR 275.81) shall be made on the withdrawal form. **[TD 78–329.]**

(d) *Deposit of estimated duties.* Estimated duties on the merchandise being withdrawn shall be deposited in accordance with subpart G of Part 141 of this chapter. The district director may increase or decrease the amount of estimated duties to be deposited on the final withdrawal to bring the aggregate amount of duties deposited into balance with the amount which he estimates will be finally due upon liquidation.

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7505–A shall be issued and delivered to the person making the warehouse withdrawal. **[TDs 74–114, 82–204.]**

(f) *Textiles and textile products.* Textiles and textile products subject to quota, visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption if during the warehouse period there has been a change by manipulation or other means:

(1) in the country of origin of the merchandise as defined by § 12.130 of this chapter.

(2) to exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(3) from one textile category to another textile category. **[TDs 84–171, 85–38.]**

§ 144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the

applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor. **[TD 82-204.]**

Subpart E—Rewarehouse Entries

§ 144.41 Entry for rewarehouse.

(a) *Applicability.* When merchandise which has been withdrawn from warehouse for transportation to another port has arrived at the port of destination, it may be entered for rewarehouse by the consignee named in the withdrawal.

(b) *Form of entry.* An entry for rewarehouse shall be made in duplicate on Customs Form 7501 and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7501, annotated "PERMIT," for use in connection with the delivery of the merchandise to the warehouse. No declaration is required on the entry. **[TDs 73-312, 84-129.]**

(c) *Combining separate shipments.* Separate shipments consigned to the same consignee and received under separate withdrawals for transportation shall not be combined in one rewarehouse entry unless the warehouse withdrawals are from the same original warehouse entry.

(d) *Bond.* A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed before a permit is issued on Customs Form 7501 for sending the merchandise to the bonded warehouse. However, no bond shall be required if the merchandise is entered by the consignee named in the original bond filed at the original port of entry, or if it is entered by a transferee who has established his right to withdraw the merchandise and has filed a bond in accordance with subpart C of this part. **[TDs 84-129, 84-213.]**

(e) *Value and classification.* The duties determined at the port where the original warehouse entry was filed shall be the duties chargeable under the rewarehouse entry, except in the cases provided for in §§ 159.7 (a) and (b) of this chapter, which pertain to certain classes of merchandise excluded from the liquidation of the original warehouse entry and merchandise on which rates of duty or tax are changed by an act of Congress or by a proclamation by the President.

(f) *Examination.* Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original 5-year period during which the merchandise may remain in warehouse under bond. **[TDs 82-204, 84-213.]**

(h) *Protest.* A protest may be filed at the port where the rewarehouse entry is made against a liquidation made at that port under §§ 159.7 (a) or (b) of this chapter, or against a refusal of the district director of that port to liquidate pursuant to said sections. In all other cases, any protest shall be filed against the original warehouse entry.

§ 144.42 Combined entry for rewarehouse and withdrawal for consumption.

(a) *Applicability.* If the consignee of merchandise withdrawn for transportation wishes to pay duty and obtain possession of the merchandise immediately upon arrival at destination, he may make a combined entry for rewarehouse and withdrawal for consumption.

(b) *Procedure for entry.* The procedures set forth in § 144.41 are applicable to this type of entry, with the following exceptions:

(1) *Form of entry.* A combined entry for rewarehouse and withdrawal for consumption shall be made on Customs Form 7501 (Consumption Entry), in 4 copies, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter, one copy to be used as the permit. No declaration is required on the entry; **[TDs 73-312, 87-75.]**

(2) *Extra copy for Internal Revenue.* An additional copy of Customs Form 7501, marked or stamped "For Internal Revenue Purposes," shall be presented for each entry of cigars, cigarettes, or cigarette papers or tubes, when the release from Customs custody of those articles is subject to Part 275 of the regulations of the Internal Revenue Service (26 CFR Part 275) and tax is payable to Customs; and

(3) *Deposit of duties.* Estimated Customs duties, taxes, and other charges, as set forth in subpart G of Part 141 of this chapter, shall be deposited upon presentation of the combined entry. The district director shall then issue a permit for release on Customs Form 7501. **[TD 87-75.]**

PART 145—MAIL IMPORTATIONS

Sec.

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Authority: 19 U.S.C. 66, 1202 (general Note 9, Harmonized Tariff Schedule of the United States), 1624. Additional authority and statutes interpreted or applied are cited in the text or in parentheses following the sections affected.

Source: T.D. 73-135, 38 FR 13369, May 21, 1973, unless otherwise noted.

§ 145.0 Scope.

The provisions of this part apply only to mail subject to Customs examination as set forth in this § 145.2. **[TD 78-102.]**

This part contains regulations pertaining specifically to the importation of merchandise through the mails but does not contain all the regulations applicable to mail importations. Importations by mail are subject to the same requirements and restrictions as importations by any other means, except where more specific procedures for mail importations are set forth in this part.

Subpart A—General Provisions

§ 145.1 Definitions.

(a) *Mail article.* "Mail article" means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to Customs examination. **[TD 78-102.]**

(b) *Letter class mail.* "Letter class mail" means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.

(c) *Sealed letter class mail.* "Sealed letter class mail" means letter class mail sealed against postal inspection by the sender.

§ 145.1a Customs fees for certain dutiable mail entries.

Each item of dutiable mail for which Customs prepares documentation will be subject to the payment of a fee for services provided, as set forth in § 24.22 of this chapter. **[TD 86-109.]**

§ 145.2 Mail subject to Customs examination.

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3. **[TD 78-102.]**

(b) *Generally.* All mail arriving from outside the Customs territory of the U.S. which is to be delivered within the Customs territory of the U.S. and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except—

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organization is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

§ 145.3 Opening of letter class mail; reading of correspondence prohibited.

(a) *Matter in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have a reasonable cause to suspect the presence of merchandise or contraband. **[TD 78–102.]**

(b) *Only correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening—

(1) A search warrant authorizing that action has been obtained from an appropriate judge or U.S. magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading—

(1) A search warrant authorizing that action has been obtained from an appropriate judge or U.S. magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other types of correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands mail.* First class mail originating in the Customs territory of the U.S. and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless—

(1) A search warrant authorizing that action has been obtained from an appropriate judge or U.S. magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

(a) *Subject to seizure and forfeiture.* When, upon Customs examination, a mail article from abroad is found to contain merchandise subject to duty or tax, and the package is not accompanied by an appropriate Customs declaration and invoice or statement of value required by § 145.11, or is found to contain material prohibited importation or imported contrary to law, the merchandise is subject to seizure and forfeiture. **[TD 78–102.]**

(b) *Mitigation of forfeiture.* Under the authority contained in § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), any forfeiture of merchandise subject to duty or tax (other than material prohibited importation) so incurred is hereby mitigated to an amount equal to 10 percent of the loss of revenue which was or might have been sustained, provided there is no evidence indicating to the district director that failure to properly declare the merchandise was due to willful negligence or an intent to defraud the revenue. If there is any such evidence, or if for any other reason the district director believes that it would not be in the interest of the U.S. to grant this relief, the matter shall be reported to the Commissioner of Customs for instructions.

(c) *Collection of mitigated forfeiture.* When the shipment does not exceed $1,000 in value, Customs Form 3419 or 7501 shall be used for the entry of the merchandise, and the duty, any tax, and the amount of the mitigated forfeiture shall be entered as separate items thereon. If a mail article for which a mail fine entry has been issued in accordance with this paragraph is undeliverable, it will be returned to the district director at the port where the entry was issued, for disposition in accordance with § 145.59 relating to articles subject to seizure. **[TDs 78–102, 86–118, 87–75.]**

(d) *Petition for relief.* The addressee or sender may file a petition with the district director at the port where the mail fine entry was issued in accordance with part 171 of this chapter for relief from the forfeiture incurred and for release of the seized merchandise, or for additional relief from a mitigated forfeiture. (62 Stat. 716, as amended, sec. 618, 46 Stat. 757, as amended; 18 U.S.C. 545, 19 U.S.C. 1618.)

§ 145.5 Undeliverable mail articles.

Mail articles which are refused or undeliverable, except mail articles for which a mail fine entry has been issued in accordance with § 145.4(c), will be marked by the postmaster to show why delivery was not made, and will be forwarded to the proper exchange post office for return to the country of origin. Mail entries will be removed from the mail articles and returned to Customs for cancellation. If, for any reason, an undeliverable mail article known or supposed to be dutiable is not returned to the country of origin or forwarded to another country in accordance with the Postal regulations, it will be delivered to Customs for disposition under the Customs laws and regulations governing seized or unclaimed merchandise. **[TD 78–102.]**

Subpart B—Requirements and Procedures

§ 145.11 Declarations of value and invoices.

(a) *Customs declaration.* A clear and complete Customs declaration on the form provided by the foreign post office, giving a full and accurate description of the contents and value of the merchandise, shall be securely attached to at least one mail article of each shipment, including shipments of special classes of merchandise treated in subpart D of this part. Although a Customs declaration is required to be attached to only one mail article of each shipment, examination and release of the merchandise will be expedited if such a declaration is attached to each individual mail article. **[TD 78–102.]**

(b) *Invoice or statement of commercial value.* Each shipment of merchandise shall have an invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment), giving an accurate description and the purchase price of the merchandise, securely attached to the outside of the mail article, or enclosed therein. If the shipment consists of more than one mail article, a copy of the invoice should accompany each mail article, or else the invoice shall accompany the mail article bearing the declaration, and that mail article shall be marked "Invoice enclosed." **[TDs 76–103, 78–102.]**

(c) Reserved. **[TD 85–39.]**

(d) *Shipments without declaration and invoice.* Shipment of merchandise which are not accompajied by a Customs declaration and invoice in accordance with paragraphs (a)–(c) of this section may be subject to seizure and forfeiture in accordance with § 145.4* (Secs. 481, 485, 498, 46 Stat*

719, 724, as amended, 728, as amended; 19 U.S.C. 1481, 1485, 1498.)

§ 145.12 Entry of merchandise.

(a) *Formal entries*—(1) *Discretionary.* The district director may require formal entry of any mail shipment regardless of value if in his opinion it is necessary to protect the revenue.

(2) *Required.* Formal entry at the customhouse shall be required for every importation in the mails which exceeds $1,000 in value, except for special classes of merchandise which can be released without entry (see subpart D of this part), and except as provided in Subparts B and C of Part 143 and § 10.1 of this chapter. **[TDs 73–175, 85–123.]**

(3) *Separate shipments.* Separate shipments not exceeding $1,000 in value, if mailed abroad at different times (as shown by the declaration or other mailing indicia), shall not be combined for the purpose of requiring formal entry, even though they reach Customs at the same time and are covered by a single order or contract in excess of $1,000, unless there was a splitting of shipments in order to avoid the payment of Customs duty. **[TD 85–123.]**

(4) *Notice of formal entry requirement.* When a formal entry is required, the addressee shall be notified of the arrival of the shipment and of the place at which entry is to be made. If the shipment is addressed to a point which is not a Customs port or station, the port of entry specified in the notice shall be the port nearest the destination of the shipment. When a formal entry is filed, it shall contain all the statistical information as provided in § 141.61(e) of this chapter. **[TD 73–312.]**

(b) *Mail and informal entries*—(1) *Preparation of entry form.* Except as provided in paragraphs (c) and (e) of this section, Customs officers shall prepare and attach a mail entry (Customs Form 3419) for each shipment not exceeding $1,000 in value which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up such a shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry (Customs Form 5119–A (serially numbered)) or an entry summary (Customs Form 7501) and collect the duty in accordance with Subpart C of Part 143 of this chapter. **[TDs 73–175, 78–394, 85–123, 87–75.]**

(2) *Rates of duty.* Merchandise released under a mail or informal entry shall be dutiable at the rates of duty in effect when the preparation of the entry is completed by a Customs employee, ready for transmittal with the merchandise to the addressee.

(c) *Dutiable shipments not over $1,000 for Government agencies.* When a dutiable shipment not exceeding $1,000 in value is addressed to a U.S. Government department or agency, the district director may release the merchandise prior to the payment of duties under an entry on Customs Form 5119–A (serially numbered) or Customs Form 7501, upon the receipt of a stipulation in the form set forth in § 141.102(d) of this chapter. If the stipulation does not accompany the shipment, the district director shall notify the Government department or agency of the arrival of the shipment and request the stipulation. Upon receipt of the completed stipulation and preparation of the entry form, the district director shall stamp all mail articles in the shipment to show that they have received Customs treatment and shall return the shipment to the Postal Service for delivery, unless the addressee has arranged to pick up the shipment at the Customs office where it is being processed. The proper Government department or agency shall be billed later for any duties and taxes due. **[TDs 73–175, 85–123, 87–75.]**

(d) *Release without entry.* Certain types of merchandise may be passed free of duty without issuing an entry (see Subpart D of this part). (Secs. 315, 484, 498, 46 Stat. 695, as amended, 722, as amended, 728, as amended; 19 U.S.C. 1315, 1484, 1498.) **[TD 78–394.]**

(e) *Unaccompanied shipments.*

(1) *Mail entry to be attached.*—If the requirements of § 148.115(a) of this chapter are met, Customs officers shall prepare and attach a mail entry, Customs Form 3419, for each shipment for which entry is claimed under subheading 9816.00.40, HTSUS (19 U.S.C. 1202), which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up the shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry, Customs Form 5119–A (serially numbered) or entry summary, Customs Form 7501, and collect the duty in accordance with subpart C of part 143 of this chapter if the requirements of § 148.115(a) of this chapter are met. **[TDs 78–394, 87–75, 89–1.]**

(2) *Disposition of Customs Form 255.*—The Declaration of Unaccompanied Articles, Customs Form 255, affixed to the shipment shall be removed by the Customs officer and retained for Customs purposes. If a mail entry, Customs Form 3419, has been prepared, the mail entry number shall be noted on the Customs Form 255.

§ 145.13 Internal revenue tax on mail entries.

(a) *Method of collection.* Any internal revenue tax assessed on a mail entry shall be shown as a separate item on the entry, and collected in the same manner as Customs duties.

(b) *Release without payment of tax.* A mail entry may not be used to release a shipment of cigars, cigarettes, or cigarette papers or tubes for a manufacturer without payment of tax as provided for in 27 CFR Part 275 and § 11.2a of this chapter. If a claim for release without payment of tax is made by the addressee at the time of delivery, the shipment will be returned by the Postal Service to the port of entry or sent to the nearest Customs office at which appropriate release as claimed may be arranged by the addressee. **[TD 78–329.]**

§ 145.14 Marking requirements.

(a) *Country of origin.* Merchandise imported by mail shall be marked with the country of origin in accordance with part 134 of this chapter. If merchandise without the required marking is to be delivered from the post office where it has been given Customs examination, the Customs officer shall require compliance with the marking law and regulations. If it is to be delivered from another post office, the Customs officer shall place in the envelope containing the mail entry a copy of Customs Form 3475, containing instructions to the postmaster concerning the marking to be required before delivery.

(b) *Other marking requirements.* Certain types of merchandise are subject to special marking requirements, such

as those contained in the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Trademark Act. Since there is no provision for post office supervision of these types of marking, the district director shall require compliance with the law and regulations (see parts 11 and 133 of this chapter).

(c) *Failure to mark.* If the addressee fails to comply with the marking requirements, the package will be treated as undeliverable in accordance with § 145.5.

Subpart C—Administrative Review of Mail Entries

§ 145.21 Administrative review.

Requests for adjustment of the amount of duty assessed under mail entries shall be handled as requests for administrative review in accordance with this subpart.

§ 145.22 Procedures for obtaining administrative review.

If an addressee is dissatisfied with the amount of duty assessed under a mail entry, he may obtain administrative review in the following ways:

(a) He may pay the assessed duty, take delivery of the merchandise, and send a copy of the mail entry to the issuing Customs office indicated on the mail entry, together with a statement of the reason it is believed the duty assessed is incorrect. Any invoices, bills of sale, or other evidence should be submitted with the statement. The addressee may show the mail entry number and date on his statement instead of sending a copy of the mail entry, but this may result in delay since a copy of the entry will have to be obtained from the Regional Commissioner of Customs, New York, N.Y., before the entry can be amended.

(b) He may postpone acceptance of the shipment, and within the time allowed by the Postal regulations provide the postmaster with a written statement of his objections. The postmaster will forward the mail entry together with the addressee's statement and any invoices, bills of sale, or other evidence submitted by the addressee to the district director who issued the entry, and retain custody of the shipment until advice is received from the district director as to the disposition to be made. If the addressee is located near one of the ports at which Customs officers are authorized to review mail entries (see 39 CFR 10.5), the postmaster may send the mail entry to that port, together with the addressee's statement and evidence, for reconsideration by the district director. **[TD 78-99.]**

(c) He may pay the assessed duty and take delivery of the merchandise, and file a protest under § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), in the form and manner prescribed in Part 174 of this chapter. (Secs. 501, 514, 46 Stat. 730, as amended, 734, as amended; 19 U.S.C. 1501, 1514.)

§ 145.23 Time limits.

A mail entry may be amended under § 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), only if the addressee requests such amendment within the time limits prescribed therein (see §§ 173.4 and 173.5 of this chapter), and the claim is allowable under § 520(c). Requests for adjustment in the amount of duty assessed under mail entries made under § 145.22(a) shall be made in such time that the request can be acted upon by the district director within 90 days after receipt of the package and payment of the duties by the addressee. Protests under § 145.22(c) must be filed not later than 90 days after payment of the duties by the addressee, but may be acted upon after the expiration of that 90-day period. (Secs. 501, 514, 46 Stat. 730, as amended, 734, as amended; 19 U.S.C. 1501, 1514)

§ 145.24 Amendment of entry.

If the district director is satisfied that the objection is valid and timely, he shall amend the mail entry. If the duty has already been paid, the Regional Commissioner shall issue an appropriate refund of duty.

§ 145.25 Entry correct.

If the district director believes the duty originally assessed was correct, he shall send the addressee a notice in writing that the request for refund of duty has been denied. If the duty has not been paid, the mail entry shall be returned to the postmaster concerned, together with a copy of the notice sent to the addressee. The postmaster will then collect the duty and deliver the shipment, or, if the addressee refuses to pay the duty, will treat the shipment as undeliverable.

§ 145.26 Rates of duty not binding.

Rates of duty assessed on a mail entry, whether assessed on the original entry or as amendments under § 145.24 are not binding for future importations. A binding ruling on tariff classification may be obtained in accordance with the procedures set forth in Part 177 of this chapter. **[TDs 73-175, 78-99.]**

Subpart D—Special Classes of Merchandise

§ 145.31 Importations not over $5 in value.

The district director shall pass free of duty and tax, without issuing an entry, mail articles containing merchandise having an aggregate fair retail value in the country of shipment of not over $5, subject to the requirements set forth in § 10.151 of this chapter. (Sec. 7, 52 Stat. 1081, as amended; 19 U.S.C. 1321.) **[TDs 73-175, 78-102, 78-394.]**

§ 145.32 Bona-fide gifts.

The district director shall pass free of duty and tax, without issuing an entry, articles sent as bona-fide gifts from persons in foreign countries to persons in the U.S. having an aggregate fair retail value in the country of shipment not exceeding $50 ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter. (R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 7, 52 Stat. 1801, as amended (19 U.S.C. 66, 1321, 1498, 16244)) **[TDs 73-175, 75-185, 78-394, 85-123.]**

§ 145.34 Personal and household effects and tools of trade.

(a) *U.S. military and civilian personnel returning from extended duty abroad.* Section 148.74 of this chapter sets forth specific requirements for exemptions from duty under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), for personal and household effects of military

and civilian personnel of the U.S. returning upon the completion of extended duty abroad. A copy of the official travel orders shall be attached to or enclosed in each mail article, and the outside of each mail article shall be clearly marked to show that exemption from duty is being claimed. [TD 78–102.]

(b) *Other personal and household effects, and tools of trade.* Certain personal and household effects and tools of trade may be passed free of duty without issuing an entry, in accordance with § 148.53 of this chapter.

§ 145.35 U.S. products returned.

Products of the U.S. returned after having been exported, which have not been advanced in value or improved in condition while abroad, may be passed free of duty without issuing an entry and without an importer's declaration on Customs Form 3311, provided the shipment is valued at not over $1,000 and the district director is satisfied that the merchandise is free of duty under subheading 9801.00.10, HTSUS (19 U.S.C. 1202). (Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498.) [TDs 85–123, 89–1.]

§ 145.36 Articles for institutions.

Books and other articles classifiable under subheading 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, Harmonized Tariff Schedule of the United States, (HTSUS) (19 U.S.C. 1202), imported by and addressed directly to a library or other institution described in subheading 9810.00.05 or 9810.00.30, HTSUS may be passed free of duty without issuing an entry, if the district director is satisfied that the merchandise is entitled to free entry. A declaration may be required in accordance with § 10.43 of this chapter under the procedure specified in § 145.42. (Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498.) [TD 89–1.]

§ 145.37 Articles for the U.S. Government.

(a) *Mail articles for copyright.* Mail articles marked for copyright which are addressed to the Library of Congress, to the Copyright Office, or to the office of the Register of Copyrights, Washington, D.C., shall be passed free of duty without issuing an entry. [TD 78–102.]

(b) *Books, engravings, and other articles.* Books, classifiable under subheading 4903.00.00, HTSUS (19 U.S.C. 1202), and engravings, etchings, and other articles enumerated in subheading 9808.00.10, HTSUS, shall be passed free of duty without issuing an entry when they are addressed to the Library of Congress or any department or agency of the U.S. Government. [TD 89–1.]

(c) *Official Government documents.* Other mail articles addressed to offices or officials of the U.S. Government, believed to contain only official documents, shall be passed free of duty without issuing an entry. Such mail articles, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed. (Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498). [TD 78–102.]

§ 145.38 Diplomatic pouches.

Mail articles bearing the official seal of a foreign government with which the U.S. has diplomatic relations, accompanied by certificates bearing such seal to the effect that they contain only official communications or documents, shall be admitted free of duty without Customs examination. (Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498.) [TD 78–102.]

§ 145.39 Articles for diplomatic officers, representatives of international organizations, and foreign military personnel.

Free entry of articles in mail articles addressed to diplomatic officers, representatives of certain international organizations, and similar persons is governed by Subpart I of Part 148 of this chapter. [TDs 73–227, 78–102.]

§ 145.40 Plant material imported for immediate exportation.

Plant material may be imported by mail free of duty for immediate exportation by mail subject to the following regulations, which have been approved by the Department of Agriculture and the Postal Service. This procedure shall not affect the movement of plant material in the internal mails through the U.S.:

(a) *Permit for entry.* Each shipment shall be dispatched in the mails from abroad, accompanied by a yellow and green special mail tag bearing the serial number of the permit for entry for immediate exportation or immediate transportation and exportation, issued by the U.S. Department of Agriculture, and also by the postal form of Customs declaration.

(b) *Place of inspection.* Upon arrival, the shipment shall be detained by or redispatched to the postmaster at Washington, D.C., Brownsville, Tex., Hoboken, N.J., Honolulu, Hawaii, Laredo, Tex., Miami, Fla., San Francisco, Calif., San Juan, P.R., San Pedro, Calif., or Seattle, Wash., as may be appropriate, according to the address on the green and yellow tag, and there submitted to the Customs officer and the Federal quarantine inspector. The merchandise shall be accorded special handling only at these cities, and under no circumstances shall it be permitted to enter the commerce of the U.S.

(c) *Special handling.* After inspection by the Customs and quarantine officers, and with their approval, the addressee or his authorized agent shall repack and readdress the mail article under Customs supervision; endorse and sign on the mail article a waiver of the addressee's right to withdraw the mail article from the mails; affix to the mail article the necessary postage; and comply with any other mailing and export requirements, after which the mail article shall be delivered under Customs supervision to the postmaster for exportation by mail in accordance with § 145.71. [TD 78–102.]

(d) *Entry not required.* It will not be necessary to issue a Customs mail entry nor to require a formal entry of the shipment.

§ 145.41 Other conditionally and unconditionally free merchandise.

Shipments of conditionally or unconditionally free merchandise not specifically treated elsewhere in this part may be passed free of duty and tax without issuing an entry, if the value is not over $1,000 and the district director is satisfied that the merchandise is entitled to free entry. (Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498.) [TD 85–123.]

§ 145.42 Proof for conditionally free merchandise.

The district director may, at his discretion, require appropriate proof of duty-free status before releasing conditionally free merchandise. This proof may be obtained by either of the following methods:

(a) *Retain shipment and request proof.* The shipment may be retained by the district director while the necessary proof is requested from the addressee. If the requested proof is not received within 30 days, a mail entry shall be issued at the ordinary rate of duty which would apply if the merchandise were not conditionally free, and the mail entry shall be forwarded with the shipment for collection of duties.

(b) *Send shipment with form and entry.* If the only proof required for free entry is a declaration signed by the addressee, the district director may issue a mail entry at the ordinary duty which would apply if the merchandise were not conditionally free. The shipment shall then be forwarded together with the mail entry, a copy of the appropriate declaration form, and instructions to the postmaster to deliver the shipment free of duty if the importer executes the declaration, and to collect the full duty shown on the mail entry if the importer does not execute the declaration.

§ 145.43 Unaccompanied tourist shipments.

Unaccompanied tourist shipments for which entry is claimed under subheading 9804.00.70, HTSUS (19 U.S.C. 1202), may be passed free of duty and tax if the requirements of § 148.115(a) of this chapter are met. The Declaration of Unaccompanied Articles, Customs Form 255, shall be removed by the Customs officer from the shipment and retained for Customs purposes. **[TD 78–394, 89–1.]**

Subpart E—Restricted and Prohibited Merchandise

§ 145.51 Articles prohibited by § 305, Tariff Act of 1930.

(a) *Types of articles.* Various articles, as described in § 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and in part 12 of this chapter, are prohibited from importation. This prohibition includes the owing types of articles:

(1) Obscene matter;

(2) Articles for causing unlawful abortion (see § 145.52 for the treatment of literature pertaining to such articles);

(3) Matter advocating treason or insurrection against the U.S. or forcible resistance to any law of the U.S.;

(4) Matter containing any threat to take the life of or inflict bodily harm upon any person in the U.S.; and

(5) Lottery matter.

(b) *Disposition of articles.* Mail found to contain lottery matter shall be disposed of by the Postal Service under the postal laws and regulations. Mail found to contain any of the other prohibited articles described in paragraphs (a)(1) through (a)(4) of this section shall be given appropriate treatment by Customs under the Customs laws and regulations (see § 12.40 of this chapter). (Sec. 305, 46 Stat. 688, as amended; 19 U.S.C. 1305.)

§ 145.52 Literature concerning devices for unlawful abortion.

Mail articles containing literature or advertisements concerning devices to produce unlawful abortions, are prohibited from the mails by 18 U.S.C. 1461, and shall be retained by, or delivered to, the Postal Service for disposition under the postal laws and regulations. If the Postal Service determines in any case that it is proper to release the material to the addressee, it shall be submitted for Customs treatment before delivery. **[TDs 78–99, 78–102.]**

§ 145.53 Firearms and munitions of war.

Importations of firearms, munitions of war, and related articles are subject to the import permit requirements and other restrictions set forth in 27 CFR parts 47, 178, 179. **[TD 78–329.]**

§ 145.54 Alcoholic beverages.

(a) *Nonmailable.* Alcoholic beverages are nonmailable, with certain exceptions (see 18 U.S.C. 1716 and the postal regulations), and when imported in the mails are subject to seizure and forfeiture under 18 U.S.C. 545.

(b) *Seizure.* When alcoholic beverages are received in the mails, they shall be seized, and the addressee shall be advised that they are subject to forfeiture and that he has a right to file a petition for their release (see part 171 of this chapter).

(c) *Conditions for release.* If the district director is satisfied that there was no fraudulent intent involved, he may release the alcoholic beverages to the addressee upon the following conditions:

(1) Applicable duty and internal revenue tax shall be paid.

(2) The addressee shall comply with the alcoholic beverage laws of the State to which the shipment is destined.

(3) Any other conditions the district director may impose under his authority to remit or mitigate fines, penalties, and forfeitures shall be complied with.

(4) The addressee, his representative, or a common carrier shall pick up the merchandise at the Customs office where it is being held. Since the merchandise is nonmailable, it cannot be delivered by the Postal Service (Sec. 618, 46 Stat. 757, as amended; 19 U.S.C. 1618.)

§ 145.55 Trademarks, trade names, and copyrights.

Merchandise bearing a trademark or trade name entitled to protection against imports, merchandise bearing a mark or name that copies or simulates such a trademark or trade name, and merchandise which is in violation of copyright law is subject to the restrictions and prohibitions set forth in part 133 of this chapter.

§ 145.56 Foreign Assets Control.

Merchandise subject to regulations of the Office of Foreign Assets Control of the Treasury Department prohibiting or restricting entry of unlicensed importations of articles directly or indirectly from North Korea, North Vietnam, Cuba, or Rhodesia shall be detained until licensed or the question of its release, seizure, or other disposition has been determined under the Foreign Assets Control or Cuban Assets Control regulations (31 CFR parts 500 and 515).

§ 145.57 Regulations of other agencies.

Certain types of plants and plant products, food, drugs, cosmetics, hazardous or caustic and corrosive substances, viruses, serums, and various harmful articles are subject to examination and clearance by appropriate agencies before release to the addressee (see part 12 of this chapter).

§ 145.58 Other restricted and prohibited merchandise.

Other restrictions and prohibitions pertaining to certain types of imported merchandise are set forth in part 12 of this chapter and applicable to importations by mail.

§ 145.59 Seizures.

(a) *Articles prohibited and contrary to law.* All mail shipments containing articles the importation of which is prohibited, or articles imported into the U.S. in any manner contrary to law, shall be seized or detained as appropriate and held by Customs officers for appropriate treatment, except for certain articles which will be handled by the Postal Service as specified in §§ 145.51 and 145.52.

(b) *Notification of seizure or detention.* In all cases where articles are seized or detained by Customs officers, the addressee shall be notified of the seizure or detention, of the reason for such action, and, if appropriate, of his right to petition for relief (see part 171 of this chapter).

Subpart F—Exportation by Mail

§ 145.71 Exportation from continuous Government custody.

(a) *Relief from duties.* Merchandise imported into the U.S., unless nonmailable, may be exported by any class of mail without the payment of duties, if:

(1) The merchandise has remained continuously in the custody of the Government (Customs or postal authorities); and

(2) The mail articles containing such merchandise are inspected and mailed under Customs supervision.

(b) *Waiver of right to withdraw.* Waiver of the right to withdraw the mail article from the mails shall be endorsed on each mail article to be so exported and signed by the exporter. **[TD 78–102.]**

(c) *Export entry or withdrawal required.* An export entry in accordance with § 18.25 of this chapter or a warehouse withdrawal for exportation in accordance with § 144.37 of this chapter, whichever is appropriate, shall be filed for merchandise being exported under this section, except for merchandise imported by mail which is either: **[TDs 73–175, 78–102.]**

(1) Unclaimed or refused and being returned by the Postal Service to the country of origin as undeliverable mail; or

(2) For which a formal entry has not been filed and which is being remailed from continuous Customs or postal custody to Canada.

§ 145.72 Delivery to Customs custody for exportation.

In certain cases where merchandise has not been in continuous Government custody, delivery to Customs custody is appropriate before exportation by mail, as set forth in the following sections of this chapter:

(a) Section 10.8 (articles exported for repairs or alterations).

(b) Section 10.9 (articles exported for processing).

(c) Section 148.33 (merchandise which was imported free of duty under a personal exemption, found to be unsatisfactory, and is being exported for replacement).

(d) Section 10.38 (exportation of imported merchandise which was entered temporarily under bond.

(e) Section 191.142 (exportation of rejected imported merchandise, with drawback of duties).

Policy Statement

Examination of Sealed Letter Class Mail

A. Customs officers and employees shall not open first class mail arriving in the U.S. Virgin Islands for delivery there, if it originated in the Customs territory of the U.S., unless a search warrant or written authorization of the sender or addressee is obtained. Customs officers or employees may open and examine all other sealed letter class mail which is subject to the Customs mail regulations (see 19 CFR Part 145) and which appears to contain matter in addition to, or other than, correspondence, provided they have "reasonable cause to suspect" the presence of merchandise or contraband. **[TD 78–102.]**

B. Customs officers and employees shall not open any sealed letter class mail which appears to contain only correspondence unless a search warrant or written authorization of the sender or addressee is obtained in advance of the opening.

C. Customs officers and employees are prohibited from reading, or authorizing or allowing others to read, any correspondence contained in any letter class mail unless there has been obtained in advance either a search warrant or written authorization of the sender or addressee. This prohibition, which will continue to be strictly enforced, also applies to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

D. If a violation of law is discovered upon opening any mail article referred to in paragraph C, and it is believed that the correspondence may provide additional information concerning the violation and is therefore needed for further investigation or use in court, a search warrant shall be obtained before any correspondence is seized, read, or referred to another agency. Search warrants shall be promptly sought. Correspondence may be detained while a search warrant is being sought.

E. If no controlled delivery is arranged and correspondence is not to be otherwise seized pursuant to a search warrant (see "F" below), the item which constitutes the violation shall be removed and any correspondence shall be replaced in the wrapper, or in a new wrapper if the original wrapper has been seized pursuant to 19 U.S.C. 1595a. The wrapper shall then be resealed, marked to indicate it was opened by Customs, and returned to postal channels. Appropriate seizure notices shall be sent in accordance with 19 CFR 145.59(b).

F. No mail article may be referred to another agency without a search warrant unless—

(1) Any correspondence has been removed and the mail article is being referred for examination and clearance under 19 CFR 145.57,

(2) Any correspondence has been removed and the mail article has been lawfully seized by Customs,

(3) The mail article is being referred to Postal Service channels to effect a controlled delivery in cooperation with other law enforcement agencies, or

(4) The mail article is being returned to Postal Service channels for normal processing.

G. Whenever sealed letter class mail is opened, the factors giving the Customs officer or employee "reasonable cause to suspect" the presence of merchandise or contraband shall be recorded on the appropriate form and on the

opened envelope or other container by means of appropriate coded symbols. Should a seizure result, these factors shall also be recorded on the seizure report.

H. Sealed letter class mail with the green Customs label or a Customs declaration may be opened without additional cause. Correspondence in such mail is subject to the restrictions regarding the detention, reading, and referral of mail to other agencies found in paragraphs C through F.

I. Whenever any sealed letter class mail is opened for any of the reasons set forth in the above paragraphs, a Postal Service employee shall be present and shall observe the opening.

J. Any violation of the Customs mail regulations or any of these policies will lead to appropriate administrative sanctions, as well as possible criminal prosecution pursuant to 18 U.S.C. 1702.

Appendix

A. *Scope*

The Customs Service is authorized to examine, with certain exceptions for diplomatic and governmental mail, all mail arriving from outside the Customs territory of the U.S. (CTUS) which is to be delivered within the CTUS, and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands. The term "Customs territory of the U.S." is limited to the States, the District of Columbia, and Puerto Rico. Consequently, mail arriving from other U.S. territories and possessions is subject to Customs examination even though it is designated "domestic" mail for Postal Service purposes. Likewise, mail in the APO/FPO military postal system is subject to Customs examination, even though it also is designated "domestic" mail for Postal Service purposes. The Customs Service therefore is responsible for examining all international mail to be delivered in the CTUS and certain limited categories of so-called "domestic mail."

B. *Definitions.*

Under various international conventions and bilateral agreements, international mail falls within two main classes, Parcel Post and Postal Union mail.

Parcel Post is not permitted to contain correspondence but is to be used for the transmission of merchandise and is fully subject to Customs examination in the same manner as other merchandise shipments (e.g., luggage, cargo, containers, etc.). Postal Union mail is divided into "LC" mail (Lettres et Cartes) and "AO" mail (Autres Objets).

"LC" mail consists of letters, packages paid at the letter rate of postage, post cards, and aerogrammes. The term "letter class mail" as used in the Customs Regulations and in this policy statement means "LC" mail as well as equivalent articles in "domestic" mail subject to Customs examination. Equivalent articles in "domestic" mail would include articles mailed at the letter rate, or equivalent class or category, in the APO/FPO military system or from a U.S. territory or possession outside the CTUS. Since the term "letter class mail" thus includes packages and bulky envelopes as long as they are mailed at the letter rate, or equivalent class or category, the restrictions relating to opening and reading of correspondence apply equally to such packages or bulky envelopes.

"AO" mail is to be treated in the same manner as Parcel Post mail since the Universal Postal Union Convention requires that they "be made up in such a manner that they may be easily examined" and generally are not permitted to "contain any document having the character of current and personal correspondence." Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in "AO" mail. "AO" mail can usually be identified by the following words: "IMPRIME" or "PRINTED MATTER," "CECOGRAMME" or "LITERATURE FOR THE BLIND," "PETIT PAQUET" or "SMALL PACKET" or similar terms or their equivalents.

C. *Reasonable Cause to Suspect*

Determining whether there is "reasonable cause to suspect" that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide "reasonable cause to suspect" and permit the opening of sealed letter class mail without a search warrant or authorization of the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.

2. X-ray or fluoroscope examination indicates the presence of merchandise or contraband.

3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.

4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.

5. The mail article is insured.

6. The mail article is a box, carton, or wrapper other than a thin envelope.

7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide "reasonable cause to suspect" the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail. For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.

2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.

3. The mail article appears to be part of a mass mailing.

4. The mail article is from a particular country, whether or not a known source country of contraband.

5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail (the individual articles of mail must then be examined individually).

6. The sender or addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.

7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In cases where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

PART 146—FOREIGN TRADE ZONES

Sec.

146.0 Scope.

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Authority: 19 U.S.C. 66, 81a - 81u, 1202 (Gen. Note 9, HTSUS), 1623, 1624, § 146.5 also issued under 31 U.S.C. 9701.

Source: T.D. 86-16, 51 FR 5049, February 11, 1986, unless otherwise noted.

§ 146.0 Scope.

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: "Board", "Grantee", and "Zones".

(b) The following are general definitions for the purpose of this part:

(1) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a-u).

(2) *Activation.* "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status.

(3) *Admit.* "Admit" means to bring merchandise into a zone with zone status.

(4) *Alteration.* "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(5) *Customs territory.* "Customs territory" is the territory of the U.S. in which the general tariff laws of the U.S. apply. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (General Note 2, Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202)).

(6) *Constructive transfer.* "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

(7) *Deactivation.* "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

(8) *Default.* "Default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

(9) *Merchandise.* "Merchandise" includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purpose of this part.

(10) *Domestic merchandise.* "Domestic merchandise" is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(11) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(12) *Conditionally admissible merchandise.* "Conditionally admissible merchandise" is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(13) *Prohibited merchandise.* "Prohibited merchandise" is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

(14) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(15) *Operator.* "Operator" is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(16) *Reactivation.* "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

(17) *Subzone.* "Subzone" is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term "zone" also applies to a subzone, unless specified otherwise.

(18) *Transfer.* "Transfer" means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

(19) *Unique identifier.* "Unique identifier" means the numbers, letters, or combination of numbers and letters that identify merchandise admitted to a zone with zone status.

(20) *User.* "User" means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

(21) *Zone lot.* "Zone lot" means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

(22) *Zone site.* "Zone site" means the physical location of a zone or subzone.

(23) *Zone status.* "Zone status" means the status of merchandise admitted to a zone, i.e., nonprivileged foreign, privileged foreign, zone restricted, or domestic. **[TD 89–1.]**

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in charge of the zone as the representative of the Board.

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

§ 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, (2) retain all records required in this Part and defined in § 162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part.

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and the regulations in this part. The operator or grantee shall pay the annual fee to the district director of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule for each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the ***Federal Register*** and the ***Customs Bulletin.***

§ 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) The application fee required by § 146.5;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the district director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

§ 146.7 Zone changes.

(a) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the supporting document requirements specified in § 146.6, as applicable. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The district director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d). No fee is required for deactivation or reactivation.

(c) *Suspension of activated site.* When approval of an activated status has been suspended through the procedure in Subpart G, the district director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The district director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the

surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of Subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The district director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals, authority of operator to break and affix.

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

§ 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.71 (a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the district director, except as otherwise specified in this part.

§ 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR Part 400.

Subpart B—Inventory Control and Recordkeeping System

§ 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.*

(1) The operator shall provide the district director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the district director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

(e) *Harbor maintenance fee.* When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in § 24.24 of this chapter. **[TD 87-44.]**

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise.*

(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director of any discrepancies in accordance with § 146.53.

§ 146.24 Transfer of merchandise from a zone.

(a) *Accountability.*

(1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

§ 146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the district director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and

need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifer, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

Subpart C—Admission of Merchandise to a Zone

§ 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* District directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 ("Application for Foreign Trade Zone Admission and/or Status Designation") and the issuance of a permit by the district director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the district director and shall include a statistical copy on Customs Form 214–A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents.*—(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of Subpart F, Part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under § 141.11 or § 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see § 141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in § 141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority is hereby given to release the merchandise described in this application to _____

_____

Name of Carrier _____

_____

Signature and title of carrier representative _____

_____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The district director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the district director, except for merchandise for direct delivery to a zone under §§ 146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in § 141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the district director before the merchandise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and record-keeping system of the operator as described in Subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

§ 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the district director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The district director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) are met.

(e) *Submission of Customs Form 214.* A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the district director, or the merchandise shall be placed in general order.

§ 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

§ 146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Forms 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the district director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Custom Form 214 to Customs at the location specified by the district director.

§ 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The district director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Admission of merchandise: alternative procedures.*— (1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the district director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 and 214–A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the district director.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5 working day period; or

(ii) The importer of record files an appropriate Customs entry for the mechandise and removes it from the zone premises.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for

admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

§ 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

§ 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise to Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported.*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will

state that zone-restricted status is desired for the merchandise.

Subpart E—Handling of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the district director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.*

(1) The district director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the district director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The district director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The district director may disaprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the district director for any reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results.*—(1) *Separate application.* —The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the district director chooses physically to supervise the operation.

(2) *Blanket application.* —The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction.* The district director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

§ 146.53 Shortages and overages.

(a) *Report required.* The operator shall report, in writing, to the district director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique indentifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the district director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage.*

(1) *Operator responsibility.* The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the district director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes.* Upon demand of the district director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

Subpart F—Transfer of Merchandise From a Zone

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise which is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices as provided in Parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

§ 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production.*—(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the district director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the district director has accepted the entry on Customs Form 3461. If the actual removals will exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

§ 146.65 Classification, valuation, and liquidation.

(a) *Classification.—(1) Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section

will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation.*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director.

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the U.S. (19 U.S.C. 1202.) **[TD 89–1.]**

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The district director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512–C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512–C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 7512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.70 Transfer of zone—restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR Part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Chapter 98, Subchapter I, HTSUS (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317) **[TD 89-1.]**

§ 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. The district director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the district director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption.*

(1) The district director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the district director has reason to believe any new entry would be cancelled under the provisions of this subparagraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this subparagraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in subparagraph (d)(1), it shall be admitted in domestic status.

Subpart G—Penalties; Suspension; Revocation

§ 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

§ 146.82 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed acts which would constitute a felony, or misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision; **[TD 88–63.]**

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay, within 30 days after the due date, all annual fees associated with the operation of a zone;

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure.*—(1) *Notice.* The district director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

§ 146.83 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations. **[TD 86–16.]**

PART 147—TRADE FAIRS

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Authority: R.S. 251, secs. 623, 624, 46 Stat. 759, as amended, secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 66, 1623, 1624, 1751-1756, unless otherwise noted.

Source: T.D. 70-134, 35 FR 9268, June 13, 1970, unless otherwise noted.

§ 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing, or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part. **[TD 70-134.]**

Subpart A—General Provisions

§ 147.1 Definitions.

The following are general definitions for the purposes of Part 147:

(a) *The Act.* "The Act" means the Trade Fair Act of 1959. (Secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 1751-1756.)

(b) *Fair.* "Fair" means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act.

(c) *Fair operator.* "Fair operator" means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* "Port" means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair which is in the same Customs district as the fair.

(e) *Closing date.* "Closing date" means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair.* "Articles for a fair" includes, but is not limited to:

(1) Actual exhibit items;

(2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;

(3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

§ 147.2 Articles which may be entered for a fair.

(a) *General.* Any article imported or brought into the U.S. may be entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

(1) In a foreign-trade zone; or

(2) Imported for exhibition under Chapter 98, Subchapter XII, HTSUS; or

(3) In continuous Customs custody, including but not limited to articles:

(i) Imported or brought into the U.S. for the purpose of direct entry at a particular fair;

(ii) In Customs bonded warehouses;

(iii) Unentered under the Customs laws and held in general order pending entry or exportation;

(iv) On exhibition at another fair designated by the Secretary of Commerce.

(b) *Exception.* Articles which have been entered under Chapter 98, Subchapter XIII, HTSUS, may not be entered under the regulations of this part. **[TDs 84-213, 89-1.]**

§ 147.3 Bond required.

The fair operator shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in such amount as the district director requires. Liquidated damages shall be assessed by the district director under the bond if payments required by §§ 147.33, 147.41 or 147.43 are not paid upon demand. **[TD 84-213.]**

Subpart B—Procedure for Importation

§ 147.11 Entry.

(a) *Made in name of fair operator.* All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the U.S. on account of such entries.

(b) *Merchandise arriving at port other than port of the fair.* Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in Part 18 of this chapter.

(c) *Form of entry.* Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

Entry for Exhibition

Entry No. _____

Entry at the port of _____ of articles consigned or transferred to _____ (Fair operator) under _____ I.T. No. _____ ex S.S. _____ from _____ on the _____ day of _____ 19—, for exhibition purposes under the Trade Fair Act of 1959.

Mark	*Number*	*Package and contents*	*Quality*	*Invoice value*

_____
(Fair operator)

By _____

(d) *Supersedes previous entry.* When entry for a fair is made under this part, such entry shall supersede any previous entry.

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this Chapter. [TD 85-39.]

§ 147.13 Transfer to fair building.

(a) *Immediate delivery.* The provisions governing immediate delivery in Part 142 of this chapter are applicable to articles for a fair. [TD 73-175.]

(b) *After entry.* Upon the entry being made, a permit may be issued by the district director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in which they are to be exhibited or used.

§ 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses.* If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the district director, in writing, to cause such articles to be placed in a bonded warehouse under a "general order permit" at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year.* At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment.* If not entered within such period, they will be regarded as abandoned to the Government.

§ 147.15 Tentative appraisement.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

Subpart C—Requirements of Other Laws

§ 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except, when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

§ 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale." When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

§ 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act.* The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act.* The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and the regulations issued thereunder.

§ 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government,

may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

Subpart D—Customs Supervision

§ 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

§ 147.32 Detail of officers to protect the revenue.

The district director shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional Customs officers and employees as may be necessary to properly protect the revenue.

§ 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made on demand to the district director for deposit to the appropriation from which paid.

Subpart E—Disposition of Articles Entered for Fairs

§ 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair premises, or otherwise disposed of, except in accordance with this subpart. The fair operator shall be liable for the payment of any unpaid duty, tax, fees, charges, or exaction due on any article removed from the fair premises or disposed of contrary to this subpart, including any article lost or stolen regardless of the fair operator's fault. The payment shall be made on demand by the district director. **[TD 84-213.]**

§ 147.42 Disposition generally.

(a) *Kinds of disposition.* Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisement.* Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised. **[TD 70-181.]**

(c) *Period for performance of certain acts.* In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

§ 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes.* Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry.* Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

§ 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a trade fair from a foreign-trade zone in the status of "zone-restricted merchandise" can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of subheading 9801.00.70, if aircraft, or subheading 9801.00.80, if not aircraft, unless excluded by U.S. Note 1(c), Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States. **[TD 83-240, 89-1.]**

§ 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with § 158.43 of this chapter. **[TD 72-258.]**

§ 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in §§ 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. (See subpart D of Part 127 of this chapter.) Any duties or internal revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale. **[TD 74-114.]**

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

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Authority: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for Subpart C, are also issued under General Note 9, HTSUS; 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

Source: T.D. 73-27, 38 FR 2449, Jan. 26, 1973, unless otherwise noted.

§ 148.0 Scope.

This part contains the regulations governing the allowance of exemptions for residents and nonresidents arriving in the U.S., for crewmembers of carriers engaged in international traffic, for military and civilian employees of the U.S., for certain evacuees, and for certain personnel of foreign governments and international organizations. Procedures and requirements are also set forth pertaining to registration of articles to be taken abroad, declaration and entry, and examination of baggage, and collection of duties and taxes. **[TD 73-27.]**

Subpart A—General Provisions

§ 148.1 Registration of effects to be taken abroad.

(a) *Persons who may use procedure.* Any person, except a nonresident seaman, airman, or person engaged in similar employment, who intends to take effects of foreign origin abroad may register such articles before departure from the U.S. in order to facilitate their identification on return to the U.S. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed unique markings can be registered.

(b) *Procedures for registration.* Applicants for registration of articles of foreign origin shall present the articles to a Customs officer and at that time, complete a Customs Form 4457. After the Customs officer has examined the articles and verified their description, he shall sign the form and return it to the applicant for presentation on return of the articles. Customs Form 4455 may be required in any case in which Customs Form 4457 will not adequately serve the purpose of registration.

(c) *Presentation on return and reuse.* The form shall be presented to the Customs officer when the registered articles are returned to the U.S. The form shall be valid for reuse as long as the document is legible to identify the registered articles. **[TD 82-102.]**

§ 148.2 Residence status of arriving persons.

(a) *General.* Persons arriving from foreign countries shall be divided into two classes for Customs purposes:

(1) Residents of the U.S. returning from abroad, and

(2) All other persons, hereinafter referred to as nonresidents.

(b) *Status as returning resident.* Citizens of the U.S., or persons who have formerly resided in the U.S. including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the U.S., shall be deemed residents of the U.S. returning from abroad within the meaning of "residents" as used in Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202), in the absence of satisfactory evidence that they have established a home elsewhere. For this purpose, the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere. The residence of a minor child shall be presumed to be that of his parents. **[TDs 78-394, 89-1.]**

(c) *Status as nonresident.* Any person arriving in the U.S. who is not a resident of the U.S. or who, though a resident of the U.S., is not returning from abroad, shall be treated for the purpose of these regulations as a nonresident.

(d) *Optional claim of nonresident status.* Any person arriving in the U.S. who would otherwise be considered a returning resident, may claim at his option the status of a nonresident if he intends to remain in the U.S. for only a short period of time before returning abroad. If the status as a nonresident claimed by an arriving person is allowed, the procedures in § 148.8 shall be followed.

§ 148.3 Customs treatment after transiting the Panama Canal.

Passengers' baggage and effects and purchases of officers and crewmembers landed in the U.S. from vessels which have transited the Panama Canal are subject to Customs examination and treatment in the same manner as arrivals from any other foreign territory. **[TD 79-276.]**

§ 148.4 Accompanying articles.

(a) *Generally.* Articles shall be considered as accompanying a passenger or brought in by him if the articles arrive on the same vessel, vehicle, or aircraft on the same date as that of his arrival in the U.S.

(b) *Baggage shipped as freight.* Articles in baggage shipped as freight on a bill of lading or airway bill shall be considered as accompanying a passenger when the baggage arrives on the conveyance on which he arrives in the U.S.

(c) *Precleared articles.* Articles in baggage, or in baggage shipped as freight, shall be considered as accompanying a passenger if examined at an established preclearance station and the baggage is hand-carried, checked or manifested on the conveyance on which he arrives in the U.S.

(d) *Automobiles.* An automobile which arrives on the same mode of conveyance on the same date as a passenger arrives in the U.S. shall be considered as accompanying him.

(e) *Misdirected baggage.* Baggage which arrives on the same mode of conveyance ahead of, or after a passenger, shall be treated as accompanying him if it is fully evident to the examining officer from the circumstances that:

(1) The passenger intended the baggage to arrive with him; and

(2) It was misdirected through no fault of the passenger.

§ 148.5 Regular entry of articles in baggage.

Subject to any applicable exemption from entry requirements, articles imported as baggage but not passed under a baggage declaration or under the procedure provided in § 148.6 for unaccompanied shipments of effects subject to personal exemptions shall be entered in the same manner as a cargo importation of like goods. In making regular entry

for articles imported in baggage, the value of articles entitled to free entry under subheadings 9804.00.10, or 9804.00.45, HTSUS (19 U.S.C. 1202), shall be disregarded in determining whether formal or informal entry is required. [TD 89–1.]

§ 148.6 Entry of unaccompanied shipments of effects subject to personal exemptions.

(a) *Declaration to support free entry.* When effects claimed to be free of duty under subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35 or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), do not accompany the importer on his arrival in the U.S. or are forwarded in bond, a declaration of the importer on Customs Form 3299 shall be required to support the claim for free entry. However, an oral declaration may be accepted in lieu of a written declaration on Customs Form 3299, for effects of a resident which are free of duty under subheadings 9804.00.10 or 9804.00.45. Effects of returning residents entitled to free entry under subheadings 9804.00.10 or 9804.00.45 (except automobiles and other vehicles of residents returning from countries other than Canada or Mexico) need not be itemized if a written declaration is required.

(b) *Exemption from entry.* If the district director is satisfied that an entry would serve no good purpose, none need be required, but evidence of ownership for Customs purposes, such as a carrier's certificate or properly endorsed bill of lading, shall be required with the declaration. Such exemption from entry may also be applied with respect to household effects or tools of trade entitled to free entry (see §§ 148.52 and 148.53 respectively) which are unaccompanied or forwarded in bond. [TD 89–1.]

§ 148.7 Unclaimed baggage.

Articles in passengers' baggage on which duties due are not paid and baggage not claimed within a reasonable time shall be treated as unclaimed and sent to general order.

§ 148.8 Temporary importation by residents arriving for short visits.

A person claiming the status of a nonresident upon arrival for a short visit in the U.S. before returning abroad may import articles free of duty under subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, HTSUS (19 U.S.C. 1202), in accordance with the following procedure:

(a) The person claiming the status shall agree to export all such articles upon his departure from the U.S., except articles imported as gifts under subheading 9804.00.30, and articles consumed during his visit;

(b) When required to do so, the person claiming the status shall list all articles of substantial value which he is importing on Customs Form 4455, in duplicate, noting thereon the expected duration of his visit. He shall present the completed form to the inspecting officer who will initial both copies and return the duplicate to him;

(c) Upon his departure from the U.S. at the completion of his visit, the person claiming the status of a nonresident shall present to a Customs officer the duplicate copy of Customs Form 4455, initialed by the inspecting officer, and the articles listed thereon shall be subject to inspection; and

(d) If he decides not to return abroad, the person claiming the status shall immediately notify the district director at the port of entry. The district director will advise him of the amount of duties and taxes due by reason of his failure to return abroad. [TD 89–1.]

Subpart B—Declarations

§ 148.11 Declaration required.

All articles brought into the U.S. by any individual shall be declared to a Customs officer at the port of first arrival in the U.S., on a conveyance en route to the U.S. on which a Customs officer is assigned for that purpose, or at a preclearance office in a foreign country where a U.S. Customs officer is stationed for that purpose.

§ 148.12 Oral declarations.

(a) *Generally.* Returning residents and nonresidents arriving in the U.S. may make an oral declaration under the conditions set forth in paragraph (b) of this section. However, written declarations may be required generally or in respect to particular types of traffic at any port if necessary to effect prompt and orderly clearance of passengers and their effects, and may be required in particular cases at any port if deemed necessary to protect the revenue. If an oral declaration is permitted, completion of the identifying information on Customs Form 6059–B may be required.

(b) *When permitted.* Oral declarations may be permitted under the following conditions:

(1) *Residents.* A returning resident may make an oral declaration if:

(i) The aggregate fair retail value in the country of acquisition of all accompanying articles acquired abroad by him and of the cost or value of alterations and dutiable repairs made abroad to personal and household effects taken out and brought back by him does not exceed $400, or $800 in the case of direct or indirect arrivals from American Samoa, Guam, and the Virgin Islands of the U.S., if not more than $400 shall have been acquired elsewhere than in such insular possessions; [TDs 78–394, 86–118.]

(ii) None of his accompanying articles are forwarded in bond; and

(iii) None of his accompanying articles are imported for the account of any other person or for sale.

(2) *Nonresidents.* An arriving nonresident may make an oral declaration if all the articles he has to declare are:

(i) Entitled to free entry under his personal exemptions (see Subpart E of this part); or

(ii) Eligible for the administrative exemption for articles not exceeding $25 in aggregate value, provided in § 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (see § 148.51). [TD 78–394.]

(c) *Memorandum baggage declaration for dutiable articles.* When an arriving person is carrying a few dutiable or taxable articles which can be readily identified and segregated from articles entitled to free entry under his personal exemptions, the Customs officer may prepare a memorandum baggage declaration using a cash receipt, Customs Form 5104, for dutiable or taxable articles if he determines that a written declaration by the arriving person is not essential.

§ 148.13 Written declarations.

(a) *When required.* Unless an oral declaration is accepted under § 148.12, the declaration required of a person arriving in the U.S. shall be in writing on Customs Form 6059–B.

(b) *Completion and presentation of written declarations.* The person arriving in the U.S. shall complete the information required by Customs Form 6059–B and shall list all articles acquired abroad which are in his possession at the time of arrival. Individual items not exceeding $5 per item in fair retail value in the country of acquisition may be grouped on the written declaration as "Miscellaneous" up to but not exceeding a total value of $50. Articles not requiring itemization as set forth in paragraph (c) of this section shall be declared orally to the Customs officer. The form shall be presented to the Customs officer who will inspect the passenger's baggage.

(c) *Itemization of certain articles not required.* Except as required by § 148.62 or § 148.66 for crewmembers' articles, the following need not be itemized in written declarations:

(1) Effects of a returning resident entitled to free entry under subheading 9804.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), for tools of trade taken abroad, or under subheading, 9804.00.45, HTSUS, for personal or household effects taken abroad. However, automobiles and other vehicles of residents returning from countries other than Canada or Mexico and the cost of all repairs or alterations to articles taken abroad must be itemized.

(2) Effects of a nonresident entitled to free entry under subheading 9804.00.20, HTSUS (19 U.S.C. 1202), for wearing apparel and other similar personal effects; subheading 9804.25, HTSUS, for tobacco products and alcoholic beverages; subheading 9804.00.30, HTSUS, for articles to be disposed of as bona fide gifts; or subheading 9804.00.40, HTSUS, for articles accompanying a person in transit to a place outside U.S. customs territory.

(3) Books, libraries, furniture, and similar household effects entitled to free entry under subheading 9804.00.05, HTSUS.

(d) *Value.* Opposite the description of each article required to be declared specifically in a written declaration the passenger shall state either:

(1) The price actually paid for the article in the currency of purchase, or its equivalent in U.S. currency; or

(2) The fair retail value in the country of acquisition if the article was not acquired by purchase, in the currency of the country in which the article was acquired or its equivalent in U.S. currency. **[TD 87–89.]**

(e) *Acknowledgment before Customs officer.* Each written declaration shall be acknowledged by the declarant before the Customs officer who examines the baggage covered by the declaration. **[TD 89–1.]**

§ 148.14 Family declarations.

A family group residing in one household, traveling together, and having the same residence status may be permitted to declare orally articles acquired abroad for the personal or household use of any member of the family if the value of such articles does not exceed the total amount of the exemption to which the family group is entitled. (See § 148.34.) Where a written declaration is required, one member of a family group may declare for all. Servants accompanying a family group shall not be included in the family declaration.

§ 148.15 Inclusion of articles not for personal or household use.

Articles not personal in character, or which are intended for sale or are brought in on commission for another person, may be included in the baggage declaration of a resident or nonresident under the conditions specified in § 148.23(c). If not so included, regular entry shall be required.

§ 148.16 Amendment of declaration.

(a) *Before examination.* A passenger shall be permitted to add an article to his declaration if, before examination of his baggage has begun, the fact that the article has not been declared is brought to the attention of the examining officer by the passenger.

(b) *After examination is begun.* A passenger shall be permitted to add an article to his declaration after examination of his baggage has begun if, before any undeclared article is found, the passenger advises the examining officer that he has such an article and the officer is satisfied that there was no fraudulent intent. Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

§ 148.17 Declaration on arrival incidental to further foreign travel.

(a) *Declaration on incidental arrival.* A resident who enters the U.S. merely as an incident of foreign travel and who will continue his foreign travel before finally returning to the U.S. from a continuous trip shall declare, but need not clear through Customs, any articles he has acquired or had repaired or altered while abroad. The incidental character of the arrival shall be made known to the Customs officer.

(b) *Treatment of articles on incidental arrival.* In order that a resident may claim the $400 or $800 exemption upon his final arrival in the U.S. from a continuous trip, articles accompanying him at the time of an incidental arrival may be exported directly from Customs custody or after transportation in bond, or the articles may be left in Customs custody if the resident upon his final return is to arrive at the Customs facility where the articles are deposited. **[TDs 78–394, 86–118.]**

(c) *Failure to advise of incidental character of arrival.* If the traveler fails to advise the Customs officer of the incidental character of his arrival, or for other reason declares any articles for allowance of the $400 or $800 exemption, such declaration shall mark the beginning of the respective period or periods during which a further exemption cannot be granted.

§ 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it , is available for seizure at the time the violation is detected, and the personal penalty prescribed by § 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a person arriving in the U.S., the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the Appendix to Part 171 of this chapter. **[TD 83-145.]**

§ 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in § 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C. 1592(c) shall be demanded from the passenger. The amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to Part 171 of this chapter. In all cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited. **[TDs 77-136, 84-18.]**

Subpart C—Examination of Baggage and Collection of Duties and Taxes

§ 148.21 Opening of baggage, compartments, or vehicles.

(a) *Customs officers not to open.* Customs officers shall not open baggage or other containers, nor unlock vehicles or compartments thereof for the purpose of examination, but shall detain them until the owner, his agent, or the person in charge of any baggage, container or vehicle opens or refuses to open them.

(b) *Refusal to open*—(1) *General.* If an owner, his agent, or the person in charge of any baggage, other container, or vehicle with a locked compartment refuses to open it, the baggage, container, or vehicle shall be treated as unclaimed.

(2) *On arrival from Canada or Mexico.* If the owner, his agent, or the person in charge of any baggage, container, or vehicle arriving from Canada or Mexico refuses to open it, it shall be opened in accordance with § 462, Tariff Act of 1930 (19 U.S.C. 1462), unless a request is received from him to make other proper disposition. If any article subject to duty, or any prohibited article is found upon opening by a Customs officer, the whole contents and the container or vehicle shall be subject to forfeiture. (Secs. 461, 462, 46 Stat. 717, 718; 19 U.S.C. 1461, 1462)

§ 148.22 Examination of air travelers' baggage in foreign territory.

(a) *Examination and surrender of declaration.* The baggage of persons traveling by air may be examined and passed in accordance with § 148.23 at places in foreign territory where U.S. Customs officers have been established for that purpose (see § 101.5 of this chapter). When baggage is examined in foreign territory, the baggage declaration shall be surrendered to the Customs officer at the airport of departure for the U.S. prior to boarding the flight. **[TD 77-241.]**

(b) *Subsequently acquired articles.* When a person whose baggage has been examined and passed in foreign territory in accordance with paragraph (a) of this section subsequently acquires additional articles prior to return to the U.S., the Customs officer to whom the declaration was surrendered may permit the amendment of that declaration to include the additional articles.

§ 148.23 Examination and clearance of baggage.

(a) *Articles free of duty.* The inspector, including inspectors on trains or ferries, who examines the baggage of any person arriving in the U.S. may examine and pass, without limitation as to value, the following articles in such baggage or otherwise accompanying such person:

(1) All articles which are for the personal or household use of the arriving person and are free of duty under Chapter 98, Subchapter IV, HTSUS, including automobiles and other articles under § 148.32.

(2) Works of art classifiable under subheadings 9701.10.00 or 9701.90.00, HTSUS.

(3) Works of art classifiable under subheadings 9702.00.00 or 9703.00.00, HTSUS, upon compliance with § 10.48 of this chapter.

(b) *Articles subject to duty.* The inspector who examines the baggage of any person arriving in the U.S. may examine, determine the dutiable value of, collect duty on, and pass articles accompanying the arriving person which are for his personal or household use but are subject to duty, including articles imported to be disposed of by him as bona fide gifts.

(c) *Articles not for personal use*—(1) *Valued at not more than $1,000 (with exceptions).* The inspector may also examine, determine the dutiable value of, collect duty on, and pass articles accompanying any person arriving in the U.S. properly listed on the baggage declaration which are not for the personal or household use of the declarant or which are intended for sale or are brought in on commission for another, provided the aggregate value of such articles is not more than $1,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII, Chapter 94, and Chapter 99, Subchapters III and IV, HTSUS.

(2) *Valued over $1,000 (with exceptions).* Articles in the baggage of or otherwise accompanying any person arriving in the U.S. which have an aggregate value over $1,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapters 94 and 99, Subchapters III and IV, HTSUS and are not intended for his personal or household use, or are intended for sale or are brought in on commission for another, may be examined and entered and cleared on a baggage declaration at the place of their arrival with a passenger if:

(i) The articles are accompanied by a proper invoice if one is required (see § 141.83 of this chapter); and

(ii) It is practicable to appraise the articles at the place of arrival. **[TDs 84–149, 86–118, 89–1.]**

(d) *Examination of tea for personal use imported in baggage.* Tea for personal use in one or more packages weighing not more than 5 pounds each, when imported in a passenger's baggage, may be delivered without examination for purity under 21 U.S.C. 41–50 and without payment of the examination fee prescribed in 21 U.S.C. 46a.

§ 148.24 Determination of dutiable value.

(a) *Principles applied.* In determining the dutiable value of articles examined under § 148.23, the Customs inspector shall apply the principles of § 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), and shall not regard the declared value or price as conclusive.

(b) *Adjustment of value declared.* An adjustment shall be made by the Customs inspector whenever the purchase price or value declared differs from the fair retail value, whether by reason of depreciation due to wear or use, curcumstances of purchase, or acquisition, or for any other reason. He shall give due consideration to the condition of the articles at the time of importation, but he shall not make any allowance for wear and use in excess of 25 per centum of the declared price or value of a worn or used article. A passenger who desires to claim a larger allowance may arrange for formal entry and appraisement of his goods. **[TD 87–89.]**

§ 148.25 Reexamination and protest.

(a) *Reexamination.* Whenever the Customs officer deems it advisable any or all of a passenger's baggage may be sent to the public stores for examination or reexamination. Passengers dissatisfied with the assessment of duty on their baggage may demand a reexamination, provided the articles have not been removed from Customs custody. In either case, a receipt for the baggage to be examined or reexamined shall be given on Customs Form 6051.

(b) *Protest.* If the passenger remains dissatisfied with the assessment of duty after reexamination, he shall pay the duty assessed and may protest the decision of the district director in accordance with Part 174 of this chapter.

§ 148.26 Collection of internal revenue taxes.

(a) *Cigars and cigarettes.* The internal revenue tax on taxable cigars and cigarattes in a passenger's baggage shall be paid to Customs, using the Customs entry form as a return. Any such return shall show the kind, the quantity, and the tax by class on cigars and cigarettes separately from the statement of duty. Unless for the personal consumption of the importer or disposition as his bona fide gift, cigars and cigarettes are subject to the packaging and marking requirements in the regulations of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Alcoholic beverages.* The internal revenue tax shall be collected on all wines and liquors in excess of the quantity entitled to exemption as specified in this part. **[TD 89–1.]**

§ 148.27 Receipt for payment.

When duties and internal revenue taxes on articles in a passenger's baggage are collected, a receipt on Customs Form 5104 shall be issued to the passenger if such duties and taxes are paid in cash. If such duties and taxes are paid by personal check, the check shall be the passenger's receipt unless a receipt is requested.

Subpart D—Exemptions for Returning Residents

§ 148.31 Effects taken abroad.

(a) *Exemption.* Each returning resident including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States is entitled to bring in free of duty and internal revenue tax under subheading 9804.00.45, and chapter 98, U.S. Note 3, HTSUS, (19 U.S.C. 1202), all personal and household effects taken abroad. To ensure allowance of the exemption, articles of foreign origin should be registered in accordance with § 148.1. Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, may be brought in free of duty if taken abroad for noncommercial use (see § 148.32). **[TDs 78–394, 89–1.]**

(b) *Repair or alteration while abroad.* If any such personal or household effect taken abroad has been advanced in value or improved in condition while abroad by repairs (including cleaning) not merely incidental to wear or use while abroad, or by alterations (including additions) which did not change the identity of the article, the cost or value of such repairs or alterations is subject to duty unless all or part of such cost or value is covered by an allowance of the $400 or $800 exemption for articles acquired abroad (see § 148.33). An effect taken abroad and there changed into a different article is dutiable at its full value when returned to the United States, unless covered in whole or in part by some provision for free entry. **[TDs 78–394, 86–118.]**

§ 148.32 Vehicles, aircraft, boats, teams and saddle horses taken abroad.

(a) *Admission free of duty.* Automobiles and other vehicles, aircraft, boats, teams and saddle horse, together with their accessories, taken abroad for noncommercial use and returned by a returning resident shall be admitted free of duty upon being satisfactorily identified.

(b) *Identification of articles taken abroad.* Upon the request of the owner or his agent, the district director shall cause any article described in paragraph (a) of this section to be examined before it is taken abroad, and shall issue a certificate of registration therefor on Customs Form 4455. On the return of the article, the certificate may be accepted as satisfactory identification of the described article for the purpose of admitting the article free of duty. In lieu of Customs Form 4455, the following may be accepted as satisfactory identification of such articles taken abroad:

(1) For an automobile, the State registration card;

(2) For an aircraft, the certificate of registration issued by the Federal Aviation Administration; and

(3) For a pleasure boat, the yacht license or motorboat identification certificate.

(c) *Repairs, alterations, and accessories.* Repairs made abroad to articles described in paragraph (a) of this section, if incidental to use abroad, are not subject to duty. Repairs not incidental to use abroad, and alterations and addtions made abroad, shall be assessed with duty upon their value at the rate at which the article itself would be dutiable if imported. Accessories for articles described in paragraph (a) of this section which are acquired abroad are dutiable as if separately imported. Any accessories, repairs, alterations,

or additions, which accompany the returning resident at the time of his return to the United States shall be included in his baggage declaration.

(d) *Entry.* Entry on a baggage declaration or regular entry (see § 148.5) shall be required if:

(1) The owner or his agent is unable to produce a proper registration card or certificate to cover the article;

(2) A claim for free entry of repairs, alterations, additions, or accessories is made under the $400 or $800 returning resident's exemption for articles acquired abroad; or **[TDs 78–394, 86–118.]**

(3) Duty is to be collected. (77A Stat. 411; 19 U.S.C. 1202, item 813.10, Tariff Schedules of the United States.)

§ 148.33 Articles acquired abroad.

(a) *Exemption.* Each returning resident is entitled to bring in free of duty and internal revenue tax under subheadings 9804.00.65 and 9804.00.70, and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202), articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the foreign journey from which he is returning and which accompany him on his arrival, subject to the limitations and conditions set forth in this section and §§ 148.34–148.38. The aggregate fair retail value in the country of acquisition of such articles for personal and household use shall not exceed $400, or $800 in the case of a resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the U.S., of which not more than $400 shall have been acquired elsewhere than in such insular possession. **[TDs 78–394, 86–118, 89–1.]**

(b) *Application to articles of highest rate of duty.* The $400 or $800 exemption shall be applied to the aggregate fair retail value in the country of acquisition of the articles acquired abroad which are subject to the highest rates of duty. If an internal revenue tax is applicable, it shall be combined with the duty in determining which rates are highest. **[TDs 78–394, 86–118.]**

(c) *Gifts.* An article acquired abroad by a returning resident and imported by him to be disposed of after importation as his bona fide gift is considered to be for the personal use of the returning resident and may be included in the exemption.

(d) *Tobacco products and alcoholic beverages.* Cigars, cigarettes, manufactured tobacco, and alcoholic beverages, may be included in the exemption to which a returning resident is entitled, with the following limits: **[TD 78–394.]**

(1) No more than 200 cigarettes and 100 cigars may be included;

(2) No alcoholic beverages shall be included in the case of an individual who has not attained the age of 21; and

(3) No more than 1 liter of alcoholic beverages may be included unless the individual is arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the U.S. An individual returning directly or indirectly from these insular possessions shall be entitled to include in the exemption no more than 1 wine gallon of alcoholic beverages, not more than 1 quart of which shall have been acquired elsewhere than in such insular possessions.

(e) *Exemption not applicable.* The exemption does not apply to articles intended for sale or acquired on commission, i.e., for the account of another person, with or without compensation for the service rendered. Articles acquired on one journey and left in a foreign country cannot be allowed the exemption accruing upon the return of the resident from a subsequent journey.

(f) *Remainder not applicable to subsequent journey.* A returning resident who has received a total exemption of less than $400 under the $400 exemption, or less than $800 under the $800 exemption in connection with his return from one journey is not entitled to apply the remainder of either amount to articles acquired abroad on a subsequent journey. **[TDs 78–394, 86–118.]**

§ 148.34 Family grouping of exemptions for articles acquired abroad.

(a) *Grouping of exemptions.* Each member of a family is entitled to the $400 or $800 exemption for articles acquired abroad, subject to the conditions prescribed in this subpart. When members of a family residing in one household travel together on their return to the U.S., the $400 or $800 exemption to which the several members of the family may be entitled may be grouped and allowed without regard to which member of the family is the owner of the articles. However, a group exemption shall not include an exemption for a family member not entitled to it in his own right, nor shall a group exemption be applied to any property of such a member. The exemption of a family member who has not attained the age of 21 shall not be applied under the group exemption to alcoholic beverages. No exemptions allowable to a resident servant accompanying the family shall be included in the family grouping. **[TDs 78–394, 86–118.]**

(b) *Members of a family residing in one household.* The term "members of a family in one household" shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live together in one household after their arrival in the U.S.

§ 148.35 Length of stay for exemption of articles acquired abroad.

(a) *Required for allowance of $400 exemption.* The $400 exemption for articles acquired abroad shall not be allowed unless the returning resident has remained beyond the territorial limits of the U.S. for a period of not less than 48 hours, except in the case of a resident arriving directly in the U.S. from Mexico. The exemption may be allowed on articles acquired abroad by a returning resident arriving directly from Mexico without regard to the length of time the person has remained outside the territorial limits of the U.S. **[TDs 78–394, 86–118.]**

(b) *Required for allowance of $800 exemption on return from Virgin Islands.* The $800 exemption applicable in the case of the arrival of a returning resident directly or indirectly from the Virgin Islands of the U.S. may be allowed without regard to the length of time such person has remained outside the territorial limits of the U.S. **[TD 86–118.]**

(c) *Computation of time.* The 48-hour period a returning resident must have completed abroad to be entitled to an exemption shall be computed exactly. For example, a resident leaving U.S. territory at 1:30 p.m. on June 1 would complete the 48-hour period at 1:30 p.m. on June 3.

§ 148.36 Frequency of allowance of exemption for articles acquired abroad.

(a) *30-day period.* The $400 or $800 exemption for articles acquired abroad shall not be granted to a returning resident who has taken advantage of such exemption within the 30-day period immediately preceding his return to the U.S. The date of the returning resident's latest prior arrival on which he declared articles acquired abroad for allowance of the $400 or $800 exemption shall be deemed the date he took advantage of the applicable exemption. **[TDs 78–394, 86–118.]**

(b) *Computation of time.* The 30-day period immediately preceding the resident's return shall be computed by excluding the day of arrival and counting backward 30 days. For example, in the case of an arrival on May 28, the resident would not be entitled to the $400 or $800 exemption if he had taken advantage of such exemption on or after the preceding April 28. **[TD 86–118.]**

§ 148.37 Replacement of unsatisfactory articles acquired abroad.

(a) *Free entry of replacement articles.* An article furnished by a foreign supplier to replace a like article of comparable value previously exempted from duty under the $400 or $800 exemptions for articles acquired abroad shall be allowed free entry if the original article is found by the importer to be unsatisfactory and the procedures provided by paragraph (b) of this section are followed. In any case in which the importer has failed to follow these procedures, the district director may allow free entry of the replacement article if he is satisfied that the unsatisfactory article was timely exported and that the failure to comply with the procedures of paragraph (b) of this section was due to inadvertence or lack of experience in Customs matters and was without willful intent to avoid Customs supervision. **[TDs 78–394, 86–118.]**

(b) *Procedure for replacement.* Any article previously exempted from duty under the $400 or $800 exemptions found by the importer to be unsatisfactory shall be returned to Customs custody and exported under Customs supervision at the expense of the importer within 60 days after its importation. A certificate of registration on Customs Form 4455 shall be issued to the importer with instructions as to its use when the unsatisfactory article is exported for replacement under the provisions of subheading 9804.00.75, HTSUS **[TDs 78–394, 86–118, 89–1.]**

(c) *Articles found damaged upon declaration.* The requirement that the original article be exported under Customs supervision does not apply when a duplicate article is furnished by a foreign supplier as a replacement for an article declared for entry under the $400 or $800 exemption and found by the Customs inspector or other examining officer to be so damaged as to constitute a nonimportation (§ 158.11 of this chapter). In such a case, Customs Form 4455 shall be issued to the importer at the time the determination of nonimportation is made and the duplicate replacement shall be considered to have been acquired abroad for the purposes of the $400 or $800 exemption provision, provided no charge is made to the importer for the duplicate replacement. **[TDs 78–394, 86–118.]**

§ 148.38 Sale of articles acquired abroad.

An article brought in under the $400 or $800 exemption for articles acquired abroad for personal or household use and subsequently sold is not dutiable or subject to forfeiture by reason of the sale if the returning resident actually acquired and imported the article for his bona fide personal or household use and not for sale. **[TDs 78–394, 86–118.]**

§ 148.39 Rented automobiles.

(a) *Importation for temporary period.* An automobile rented by a resident of the U.S. while abroad may be brought into the U.S. by or on behalf of such resident for a temporary period not to exceed 30 days under subheading 9804.00.60, HTSUS (19 U.S.C. 1202), without payment of duty. The automobile shall be used for the transportation of the resident and that of his family and guests, and for such incidental carriage of articles as may be appropriate to his personal use of the automobile. No entry or security for exportation shall be required.

(b) *Unauthorized use or failure to export.* If any automobile exempted from duty under subheading 9804.00.60, HTSUS (19 U.S.C. 1202), is used otherwise than for the purpose expressed or is not returned abroad within 30 days, without prior payment to a district director of the duty which would have been payable at the time of entry if entered without benefit of the exemption, the automobile or its value (to be recovered from the importer) shall be subject to forfeiture.

Subpart E—Exemptions for Nonresidents

§ 148.41 Articles carried through the U.S.

An arriving nonresident who is in transit to a place outside U.S. Customs territory may take with him through U.S. Customs territory for carriage to such place articles not exceeding $200 in aggregate value including not more than 4 liters of alcoholic beverages without the payment of duty or internal revenue taxes as provided in subheading 9804.00.40 and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202). **[TDs 78–394, 89–1.]**

§ 148.42 Personal effects.

(a) *Exemption.* A nonresident arriving in the U.S., regardless of age, is entitled under subheading 9804.00.20, and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202), to entry free of duty and internal revenue tax for his wearing apparel, articles of personal adornment, toilet articles, and similar personal effects. "Similar personal effects" include all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, wheelchairs for invalids or crippled persons, pet and hunting dogs, and the like.

(b) *Application of exemption.* The exemption applies only to articles which were actually owned by the nonresident and in his possession abroad at the time of, or prior to, his departure for the U.S. The articles must be appropriate for the personal use of the nonresident, and intended only for such use and not as a gift for another person nor for sale. **[TD 89–1.]**

§ 148.43 Tobacco products and alcoholic beverages.

(a) *For personal use.* Fifty cigars, or 200 cigarettes, or 2 kilograms of smoking tobacco, and not exceeding 1 liter of alcoholic beverages may be passed free of duty and internal revenue tax under subheading 9804.00.25 and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202), when brought in

by an adult nonresident for his personal use, and not for commercial use or to be given to another person. This exemption for tobacco products may be applied proportionately. (Sec. 7, 52 Stat. 1081, item 817.00, Tariff Schedules of the United States, 92 Stat. 888 (19 U.S.C. 1202, 1321, SCC. 202 Pub. L. 95–410)) **[TDs 78–394, 80–179, 89–1.]**

(b) *For gifts.* A nonresident who is allowed the $100 gift exemption (see § 148.44) may include not more than 100 cigars under such exemption from duty and internal revenue tax, provided the cigars accompany him and are to be disposed of only as bona fide gifts. **[TD 78–394.]**

§ 148.44 Gifts.

(a) *Exemption.* An arriving nonresident who intends to remain in the U.S. for not less than 72 hours is entitled to claim as free of duty and internal revenue tax under subheading 9804.00.30 and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202), articles not over $100 in aggregate value not including alcoholic beverages and cigarettes, but including not more than 100 cigars which accompany him and are to be disposed of by him as bona fide gifts. See § 148.43(b) for limitations on cigars under this exemption. **[TDs 78–394, 89–1.]**

(b) *Frequency of allowance.* The exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding 6 months.

§ 148.45 Vehicles and other conveyances.

Nonresidents are entitled to entry free of duty and internal revenue tax under subheading 9804.00.35 and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202), for automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation and the usual equipment accompanying them, if such articles are imported in connection with the arrival of the nonresident to be used in the U.S. only for the transportation of the nonresident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance. **[TD 89–1.]**

§ 148.46 Sale of exempted articles.

(a) *Sale resulting in forfeiture.* The following articles or their value (to be recovered from the importer) upon their sale, shall be subject to forfeiture in accordance with the provisions of Chapter 98, Subchapter IV, U.S. Note 1, HTSUS (19 U.S.C. 1202), unless the procedure set forth in paragraph (b) of this section is followed:

(1) Any jewelry or similar articles of personal adornment having an aggregate value of $300 or more which have been allowed an exemption under § 148.42, if sold within 3 years of the date of importation.

(2) Any conveyance or its equipment allowed an exemption under § 148.45, if sold within 1 year after the date of importation.

(b) *Procedure permitting sale.* Articles described in paragraph (a) of this section may be sold if, prior to the time of sale, payment is made to a district director of the duty which would have been payable at the time of entry if the article had been entered without the benefit of the applicable exemption.

(c) *Permissible sales.* A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not a basis for any liability for duty or forfeiture. **[TD 89–1.]**

Subpart F—Other Exemptions

§ 148.51 Special exemption for personal or household articles.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by § 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for his personal or household use including gifts, but not for any business or commercial use, accompanying:

(1) A nonresident arriving in the U.S. who is not entitled to an exemption for gifts under subheading 9804.00.39, HTSUS (19 U.S.C. 1202) (see § 148.44); or

(2) A returning resident who is not entitled to the $400 or $800 exemption for articles acquired abroad under subheading 9804.00.70, HTSUS (19 U.S.C. 1202) (see Subpart D of this part). **[TDs 78–394, 86–118.]**

(b) *Limitations.* No article accompanying a person arriving in the U.S. shall be exempted from duty or internal revenue tax under § 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such person is subject to duty or tax by reason of the following limitations on the application of this exemption:

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $25. **[TD 78–394.]**

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to articles subject to internal revenue tax other than: (Sec. 7, 52 Stat. 1081, item 877.00, Tariff Schedules of the United States, 92 Stat. 888 (19 U.S.C. 1202, 1321, Sec. 202, Pub. L. 95–410)) **[TD 80–179.]**

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters; or

(c) *Family grouping.* Family grouping of the exemption shall not be allowed. (Sec. 7, 52 Stat. 1081, as amended; 19 U.S.C. 1321) **[TD 89–1.]**

§ 148.52 Exemption for household effects used abroad.

(a) *Exemption.* Furniture, carpets, paintings, tableware, books, libraries, and other usual household furnishings and effects actually used abroad for not less than 1 year by residents or nonresidents, and not intended for any other person or for sale may be allowed entry free of duty and tax under subheading 9804.00.05, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Household effects used abroad not less than 1 year by a family of which the importer was a resident member for not less than 1 year during the period of use may be allowed free entry whether or not the importer owned the effects at the time of such use. The year of use need not be continuous, nor need it immediately precede the time of importation.

(b) *Proof of use.* In order to obtain free entry for household effects under this section, the use of the effects abroad for 1 year must be proven to the satisfaction of the district director. The district director, in his discretion, may require evidence of use other than the declaration provided for in paragraph (c) of this section.

(c) *Declaration.* When household effects are claimed to be free of duty a declaration of the owner on Customs Form

3299 shall be required to support the claim for free entry. If it is impracticable to produce the declaration at the time of entry, the importer may give a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of the owner's declaration within 6 months.

(d) *Arrival of effects more than 10 years after arrival of importer.* As a general rule, household effects arriving more than 10 years after the last arrival of the importer from the country in which the effects were used shall not be admitted free of duty under this exemption unless the district director is satisfied from the importer's explanation that the effects were unavoidably detained beyond the 10-year period. However, in no case shall free entry be allowed under this provision when a period of 25 years or more has elapsed since the last arrival of the importer in the U.S. from the country in which the effects were used. **[TD 89–1.]**

§ 148.53 Exemption for tools of trade.

(a) *Exemption.* Professional books, implements, instruments, or tools of trade, occupation or employment, may be allowed entry free of duty and tax under the provisions of subheading 9804.00.15, HTSUS (19 U.S.C. 1202), for such articles owned and used abroad by any person emigrating to the U.S., or subheading 9804.00.10 for such articles taken abroad by or for the account of any person arriving in the U.S. The exemption for emigrants under subheading 9804.00.15 shall not be applied to:

(1) Theatrical scenery, properties, or apparel;

(2) Articles for use in any manufacturing establishment;

(3) Articles for any other person; or

(4) Articles for sale.

(b) *Declaration.* A declaration of the emigrant or returning individual on Customs Form 3299 shall be required to support the claim of free entry. However, an oral declaration may be accepted from a returning individual in lieu of a written declaration for any such articles claimed to be free of duty under subheading 9804.00.10, HTSUS (19 U.S.C. 1202). **[TD 89–1.]**

§ 148.54 Exemption for effects of citizens dying abroad.

(a) *Exemption.* Articles claimed to be personal and household effects, not stock in trade, the title to which is in the estate of a citizen of the U.S. who died abroad may be allowed entry free of duty and tax under subheading 9804.00.85 and Chapter 98, U.S. Note 3, HTSUS (19 U.S.C. 1202).

(b) *Entry.* Such effects shall be entered in accordance with the provisions of §§ 143.11—143.16 of this chapter, or if the value of such effects does not exceed $250, entry may be permitted under the provisions of §§ 143.21 through 143.28 of this chapter. **[TDs 78–99, 89–1.]**

(c) *Statement of facts required.* The district director shall require in connection with the entry the written statement of a person having knowledge of the facts or shall otherwise satisfy himself as to the citizenship of the deceased owner of the effects at the time of death.

§ 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption.* An exemption is provided for trademarked articles accompanying any person arriving in the U.S. which would be prohibited entry under § 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or § 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the U.S. when inported for the arriving person's personal use in the quantities provided in paragraph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations.*—(1) *30-day period.* The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the U.S. The date of the person's last arrival on which he claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(b) *Sale of exempted articles.* If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities.* Generally, each person arriving in the U.S. may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the ***Federal Register*** a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty. **[TD 79–159.]**

Subpart G—Crewmember Declarations and Exemptions

§ 148.61 Status as crewmembers.

The following persons arriving in the U.S. shall not be treated as crewmembers: **[TD 76–338.]**

(a) Members of the uniformed services of the U.S. and persons in the civil service of the U.S. engaged in the operation of a vessel, vehicle, or aircraft owned by, or under the complete control and management of, the U.S. or any of its agencies.

(b) Persons engaged in the operation of a private or public aircraft.

(c) Persons not connected with the operation, navigation, ownership, or business of a vessel, vehicle or aircraft engaged in international traffic.

§ 148.62 Declaration and entry of articles by crewmembers.

(a) *Declaration required.* Articles which are to be landed by a crewmember, including any person traveling on board a vessel, vehicle, or aircraft engaged in international traffic who is returning from a trip on which he was employed as a crewmember, shall be declared upon arrival of the vessel, vehicle, or aircraft in the U.S. When practicable, the clearance of articles through Customs shall be made and permission to unlade obtained before the articles are taken

from the carrier. However, if no danger to the revenue will result, articles may be submitted for examination and clearance to the Customs office on the pier or at the landing place.

(b) *Form of declaration*—(1) *Oral declaration.* A crewmember may be permitted to make an oral declaration and entry if all articles he has to declare, in addition to articles for use in port on temporary leave for which no entry is required in accordance with § 148.63, may be admitted free of duty and tax under § 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (See § 148.64).

(2) *Written declaration.* A written declaration on Customs Form 5129, Crewmember's Declaration shall be required in any case in which an oral declaration is not permitted. A written declaration may be required in any case if necessary to effect prompt and orderly clearance of crewmembers and their effects or if deemed necessary to protect the revenue. **[TD 78–99.]**

(c) *Transfer without declaration.* Articles belonging to a crewmember may be transferred from one carrier to another in international traffic without declaration, entry, or assessment of duty if the transfer is carried out under the supervision of Customs officers, or by a bonded cartman if necessary.

(d) *Entry at port where articles to be landed.* Articles in the possession of or owned by a crewmember of a character for which entry must be made when they are brought into the U.S. shall be entered at the port where the articles are to be landed. However, if the crewmember remains on a vessel, vehicle, or aircraft which is to proceed to another port of the U.S. in a movement in which entry of the vessel, vehicle, or aircraft will not be required, entry of the articles shall be made at the port at which such movement begins.

(e) *Collection of duty and taxes.* Any duties and taxes found due shall be collected as in the case of arriving passengers.

§ 148.63 Articles for use while on temporary leave.

(a) *Exemption.* Articles in the possession of and exclusively for use by any crewmember during the trip or voyage, such as necessary clothing, toiletries, and purely personal effects, may be landed by such crewmember for use on temporary leave without a written declaration or entry, and without payment of duty or internal revenue tax under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), if the district director is satisfied that:

(1) The articles are reasonable and appropriate for the crewmember's accommodation while on temporary leave, and are to be taken out of the U.S., except for articles consumed in use;

(2) The articles are intended exclusively for the crewmember's bona fide personal use;

(3) The quantities are reasonable, depending on the circumstances in each particular case; and

(4) In the case of tobacco products and alcoholic beverages, the containers have been opened and the total quantity landed shall not exceed 50 cigars, 300 cigarettes, or 2 kilograms of smoking tobacco, or a proportionate amount of each, and 1 liter of alcoholic beverages. **[TD 80–179.]**

(b) *Temporary leave.* A crewmember is not considered to be on temporary leave from a vessel, vehicle, or aircraft engaged in international traffic or entitled to the exemption under this section upon disembarkation when he is to remain in the confines of a pier, terminal, airport, or area immediately adjacent thereto, in order to timely embark on the carrier in the course of a continuous journey or on a concurrently scheduled arrival and departure. **[TD 89–1.]**

§ 148.64 Administrative exemption.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by § 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for the personal and household use, including gifts, of a crewmember arriving in the U.S. who is not entitled to an exemption under subheadings 9804.00.30 or 9804.00.70, HTSUS (see §§ 148.66(c) and 148.65). The exemption may be applied when the crewmember is entitled to an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), for articles for use while on temporary leave (§ 148.63).

(b) *Limitations.* No article accompanying a crewmember arriving in the U.S. shall be exempted from duty or internal revenue tax under § 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such crewmember is subject to duty or internal revenue tax by reason of the following limitations.

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $25. **[TDs 84–149, 89–1.]**

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to any article subject to internal revenue tax in addition to any articles allowed an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters.

(Subheading 9805.00.50, HTSUS (19 U.S.C. 1202, 132D)). **[TDs 80–179, 89–1.]**

§ 148.65 Exemptions for resident crewmembers.

(a) *Status as returning resident.* A crewmember arriving on a vessel, vehicle, or aircraft from a foreign port who is a resident of the U.S. shall be considered a returning resident qualifying for the exemptions allowed under Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202), and subpart D of this part if he permanently leaves the carrier without intention of resuming his employment on the same or any other carrier that is engaged in international traffic.

(b) *Statement on declaration.* A resident crewmember who claims that articles declared by him are entitled to be passed free of duty and tax under the returning resident's exemption, shall include a legible statement on the declaration, Customs Form 5129, of the basis for his claim for entitlement to the resident's exemption (see paragraphs (a) (1) and (2) of this section). **[TDs 78–99, 81–218, 89–1.]**

§ 148.66 Exemptions for nonresident crewmembers.

(a) *Status as arriving nonresident.* A nonresident crewmember will be treated as an arriving nonresident for purposes of claiming the exemptions allowable under Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202), and subpart E of this part when he permanently leaves his employment with a vessel, vehicle, or aircraft at a port in the U.S. without

intention of resuming employment on the same or another carrier in international traffic. However, a nonresident crewmember shall not be treated as an arriving nonresident for this purpose when he departs a carrier for temporary leave but retains his employment with the carrier so that he will be going foreign again in the course of his continuing employment (see § 148.63).

(b) *Articles carried through the U.S.* A nonresident crewmember, permanently leaving a carrier in a U.S. port to travel as a passenger on another carrier which will take him to a place outside the U.S., who desires to take with him articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue tax as provided in subheading 9808.00.40, HTSUS (see § 148.41), may be accorded free entry of the articles under the following procedure: **[TD 78–394.]**

(1) *Declaration and supporting statement.* The nonresident crewmember shall itemize the articles on his declaration and entry, Customs Form 5129, required by § 148.62(b)(2), and shall state in writing in support of his declaration that: **[TD 78–99.]**

(i) He has been finally discharged from the carrier, with the date of discharge;

(ii) He intends to depart from the same or another U.S. port as a passenger on another carrier for a place outside U.S. Customs territory; and

(iii) The articles will be taken with him on such carrier and will not remain in the U.S.

(2) *Allowance by district director.* The district director may require verification of the crewmember's discharge and a statement as to the accuracy of the second and third supporting statements of the crewmember from the person in charge of the carrier, the vessel agent, or the port captain. If the district director is satisfied that the crewmember's statements are correct, the articles may be passed free of duty and internal revenue tax under subheading 9808.00.40, HTSUS (19 U.S.C. 1202).

(c) *Articles to be disposed of as gifts.* A nonresident crewmember shall itemize on his baggage declaration and entry, Customs Form 5123 or 5129, required by § 148.62, all articles in his possession for which he seeks entry under subheading 9804.00.30, HTSUS (19 U.S.C. 1202), as bona fide gifts. The crewmember must be permanently leaving his employment on the international carrier for a stay in the U.S. of at least 72 hours before departing for a place outside the U.S. as a passenger. **[TD 89–1.]**

§ 148.67 Penalties for failure to declare articles.

(a) *Avoidance of inspection.* When articles may be presented to the Customs office on the pier or at the landing place for inspection and clearance, if the circumstances under which the articles are landed indicate an attempt to avoid inspection, the penalties prescribed in § 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed.

(b) *Articles landed without declaration.* Any article landed without having been properly declared as provided in § 148.62 shall be considered as having been unladen without a permit and the penalties provided in § 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), or § 1474 of title 49, United States Code, shall be assessed as applicable.

(c) *Articles omitted from declaration.* If the declaration does not include all the articles landed, the crewmember shall be subject to the penalties prescribed in § 497, Tariff Act of 1930 (19 U.S.C. 1497), with respect to the articles omitted. The penalties prescribed in § 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall not be assessed if any, though not all, of the articles are declared, except as provided in paragraph (a) of this section.

Subpart H—Military and Civilian Employees of the U.S., and Evacuees

§ 148.71 Status of persons in service of U.S. as returning residents.

A person in the service of the U.S. and members of his family arriving in the U.S. are ordinarily considered returning residents for the purpose of Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202), except that the following persons are treated as nonresidents:

(a) A wife or husband of any person in the service of the U.S. emigrating to the U.S., and

(b) A child born abroad of any person in the service of the U.S. who is arriving in the U.S. for the first time. **[TD 89–1.]**

§ 148.72 Reserved [TD 83–213.]

§ 148.73 Baggage on carriers operated by the Department of Defense.

(a) *Declaration.* All persons, including crewmembers, entering the U.S. on carriers operated by or for the Department of Defense shall execute written baggage declarations. **[TD 83–213.]**

(b) *Exemptions applicable.* Passengers on transports shall be granted the applicable exemptions from duty provided for in Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202). Members of the Armed Forces of the U.S. and personnel in the civil service of the U.S. engaged in the operation of the vessel shall be accorded the same privilege. Civilian officers and crewmembers not in the service of the U.S. shall be subject to the provisions of Subpart G of this part with respect to exemption from duty.

(c) *Examination of baggage.* Baggage on transports shall be examined at the port where landed in the same manner as baggage on commercial vessels. **[TD 89–1.]**

§ 148.74 Exemption on termination of assignment to extended duty or on evacuation.

(a) *Exemption.* With the limitation on alcoholic beverages and tobacco products provided in paragraph (c) of this section, entry free of duty and tax under item 817.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), may be accorded personal and household effects of:

(1) Any person in the service of the U.S. who returns to the U.S. upon the termination of assignment to extended duty at a post or station outside the Customs territory of the U.S.;

(2) Members of his family who have resided with him at such post or station and are returning upon the termination of his assignment; or

(3) Any person evacuated to the U.S. under Government orders or instructions.

(b) *Applicability of exemption.* The term "personal effects" as used in subheading 9805.00.50, HTSUS, is not

confined to that class of articles described in subheading 9804.00.20, HTSUS, nor is any period of use, such as prescribed by subheading 9804.00.05, HTSUS, applicable to household effects entered under subheading 9805.00.50, HTSUS. The privilege of free entry under subheading 9805.00.50, HTSUS, does not apply to:

(1) Articles imported for sale, or for the account of any person not specified in subheading 9805.00.50, HTSUS; or

(2) Articles which have not been in the direct personal possession of the claimant, or a member of his household, while abroad.

(c) *Limitation on alcoholic beverages and tobacco products.* A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under subheading 9805.00.50, HTSUS, subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the U.S.;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemption as a returning resident under subheadings 9804.00.65 and 9804.00.70, HTSUS: and

(4) Such person, if other than one in the serve of the U.S., shall have attained the age of 21. **[TDs 80–179, 89–1.]**

(d) *Termination of assignment to extended duty.* The requirement of subheading 9805.00.50, HTSUS that the person "returns to the U.S. upon the termination of assignment to extended duty" shall be considered met upon necessary proof being submitted that any one of the following is applicable:

(1) The person is returning upon the termination of a tour of duty outside the Customs territory of the U.S. of at least 140 days' duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the Customs territory of the U.S., regardless of the duration of the duty. A crewmember, including a member of a command, serving on a U.S. naval vessel when it departs from the U.S. on an intended deployment of 120 days or more outside the Customs territory of the U.S. and who continues to serve on the vessel until it returns to the U.S. may be considered as returning after the termination of an assignment of duty under permanent change of station orders.

(3) The person is returning to the U.S. upon the termination of a tour of duty at any time after leaving the U.S. for duty of not less than 140 days outside the Customs territory of the U.S.

(4) The person, although not returning to the U.S., is ordered by the Government agency involved from duty at a post or station outside the Customs territory of the U.S. to duty at another post or station outside the Customs territory of the U.S. necessitating the return to the U.S. of his personal and household effects. **[TD 89–1.]**

§ 148.75 Persons ineligible for exemption on termination of assignment.

(a) *Persons returning from temporary assignment.* No person, or member of his family, shall be allowed free entry of personal and household effects under subheading 9805.00.50, HTSUS (19 U.S.C. 1202), where the person returns to the U.S. pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the U.S. upon termination of temporary duty, except as it may otherwise be deemed proper in accordance with the provisions of § 148.74(d) or § 148.76.

(b) *Persons returning on leave or before termination of extended duty assignment.* A person returning on leave, other than on reemployment leave at the termination of assignment to extended duty as defined in § 148.74(d), or otherwise returning before the termination of an assignment to extended duty outside the Customs territory of the U.S., with or without orders covering the return, is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202).

(c) *Person returning on temporary duty assignment.* A person returning to the U.S. under orders on temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the U.S. at the termination of extended duty outside the Customs ttory of the U.S. and is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202). **[TD 89–1.]**

§ 148.76 Waiver of requirements or limitations.

In any case in which the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under § 148.74(c) or the failure of the person to meet the requirements that he be returning upon the termination of assignment to "extended duty," as explained in § 148.74(d), will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

§ 148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(a) *General procedure.* All articles for which free entry is claimed under subheading 9805.00.50, HTSUS (19 U.S.C. 1202), shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended. District directors shall be satisfied in all cases that the articles for which free entry is claimed under subheading 9805.00.50, HTSUS, Tariff Schedules of the United States, are personal and household effects of the importer entitled to the benefits of subheading 9805.00.50, HTSUS, particularly in those cases where the quantity of effects imported may appear to be unreasonable for personal or household use. No invoice shall be required for articles accorded free entry under this provision.

(b) *Declaration and entry*—(1) *Person entitled to exemption.* Declaration and entry for articles claimed to be exempt from duty and tax under subheading 9805.00.50, HTSUS (19 U.S.C. 1202), may be made on Customs Form 3299, or Department of Defense Form (DD) 1252 when entry is made in the name of the person who is entitled to the benefits of the exemption. The date of the person's last departure from the U.S. shall be indicated on the declaration and entry. **[TD 85–123.]**

(2) *Designated official.* Customs Form 3299 or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a U.S. Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the U.S. Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the U.S. need not be indicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of (Name of Government employee) Travel orders and information on hand in this office show that the named person has met all requirements of § 148.74, Customs Regulations, and is entitled to the benefits of subheading 9805.00.50, HTSUS. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

(c) *Verification of claim for exemption*—(1) *By travel orders.* The declaration and entry shall be verified by the Customs officer by an inspection of the owner's travel orders. If the district director accepts an inspection of the owner's travel orders as evidence that the effects were brought into the U.S. within the requirements of subheading 9805.00.50, HTSUS, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration.

(2) *By other evidence.* The declaration and entry may be verified by other evidence which satisfies the district director that the effects were brought into the U.S. in connection with:

(i) The person's return to the U.S. upon the termination of assignment to extended duty, as explained in § 148.74(d);

(ii) The return of members of his family who have resided with him at his post or station upon the termination of his assignment; or

(iii) The evacuation of a person to the U.S. under Government orders or instructions. **[TDs 82–145, 89–1.]**

Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals

§ 148.81 General provisions.

(a) *Reciprocal privileges.* The privileges provided for in §§ 148.81 through 148.86 and § 148.90 of this chapter shall be accorded only if reciprocal privileges are granted by the foreign government involved to U.S. personnel of comparable status. **[TD 73–227.]**

(b) *Baggage and effects.* The term "baggage and effects," as used in this subpart includes all articles which were in the possession of a person abroad, and are being imported in connection with his arrival, and which are intended for his bona fide personal or household use. It does not include articles imported as an accommodation to others or for sale or other commercial use. **[TD 73–227.]**

(c) *Aliens.* The privileges provided in this subpart shall be accorded only to alien representatives, officers, employees, and members of the armed forces of foreign governments and designated public international organizations. **[TD 73–227.]**

(d) *Internal revenue tax.* Any article exempted from the payment of duty under this subpart shall be exempt also from the payment of any internal revenue tax imposed upon or by reason of importation. **[TD 73–227.]**

§ 148.82 Diplomatic, consular and other privileged personnel.

(a) *Inviolability of the person of diplomatic personnel.* The person of the representatives of foreign governments and members of their families set forth below shall be free from arrest, search, or detention:

(1) Ambassadors, ministers, charges d'affaires, secretaries, counselors, attachés of foreign embassies and legations, and other heads of diplomatic missions or members of the diplomatic staffs of such missions, accredited to the U.S. or en route between other countries to which accredited and their own countries.

(2) Members of the families forming part of the households of the diplomatic personnel listed in the preceding subparagraph, who are accompanying them or traveling separately to join them incidental to their official travel, excluding those members of families who are U.S. nationals.

(3) Members of the administrative and technical staffs of diplomatic missions accredited to the U.S. and members of their families forming part of their household, all of whom are not nationals or permanent residents of the U.S. who are accompanying them or traveling separately to join them incidental to their official travel.

(4) Diplomatic and consular couriers.

(b) *Exemption for baggage and effects and admission without entry.* The baggage and effects of the following representatives of foreign governments shall be admitted free of duty without the filing of an entry, upon the request of the Department of State and appropriate instructions from the U.S. Customs Service in each instance:

(1) Ambassadors, ministers, charges d'affaires, secretaries, counselors, attachés of embassies and legations, and other members of the diplomatic staffs of such missions accredited to the U.S. or en route to or from other countries to which assigned, as well as recognized consular officers, and the immediate families, suites, and servants of all the above under subheading 9806.00.05, HTSUS (19 U.S.C. 1202).

(2) Members of the administrative and technical staffs of diplomatic missions and members of their families forming part of their households, all of whom are not nationals or permanent residents of the U.S. under subheading 9806.00.05, HTSUS (19 U.S.C. 1202). Unless more extensive privileges are provided in treaties or special agreements between the U.S. and the foreign country concerned, this privilege is limited to baggage and effects imported at the time of first installation.

(3) Consular employees who are not nationals or permanent residents of the U.S. Unless more extensive privileges are provided in treaties or special agreements between the U.S. and the foreign country concerned, this privilege is limited to articles imported at the time of first installation.

(4) Other high officials of foreign governments and such distinguished foreign visitors as may be designated by the Department of State, and their immediate families under subheading 9806.00.25, HTSUS (19 U.S.C. 1202).

(5) Foreign government personnel entitled to privileges under statutes or treaties under subheading 9806.00.30, HTSUS (19 U.S.C. 1202).

(6) Diplomatic couriers, limited to accompanying baggage and effects.

(c) *Absence of special request.* In the absence of special request from the Department of State prior to the arrival of representatives of foreign governments enumerated in paragraph (b)(1) of this section, their immediate families as well as accompanying suites and servants, and diplomatic couriers, their baggage and effects may be admitted free of duty without entry upon presentation of their credentials or other proof of their identity.

(d) *Delay in arrival of baggage or effects.* If by accident or unavoidable delay in shipment the baggage or other effects of a person entitled to the privileges of this section shall arrive after him upon satisfactory proof of ownership, such baggage or effects may be passed free of duty without entry.

(e) *Inspection of baggage*—(1) *Exemption for representatives of foreign governments.* The personal baggage of the following representatives of foreign governments and their families is ordinarily exempt from inspection:

(i) Ambassadors, ministers, charges d'affaires, secretaries, counselors, attachés of foreign embassies or legations, and other members of the diplomatic staffs of such missions, who are accredited to the U.S. or en route between other countries to which accredited and their own countries and members of their families forming part of their household who are not nationals of the U.S.

(ii) Consular officers recognized by the U.S. and members of their families forming part of their household who are not nationals or permanent residents of the U.S., provided the baggage accompanies them.

(iii) Diplomatic couriers, provided the baggage accompanies them.

(2) *Conditions permitting inspection.* The personal baggage of representatives of foreign governments listed in subparagraph (1) of this paragraph and members of their families may be inspected if there is serious reason to believe that it contains:

(i) Articles other than those for the personal use of such persons or for the use of their establishments or for official mission use.

(ii) In the case of consular officers and their families, articles intended for consumption in excess of the quantities necessary for direct use by the person concerned.

(iii) Articles which are absolutely or conditionally prohibited importation or exportation under the laws or regulations of the U.S., or which are subject to the quarantine laws or regulations of the U.S.

(3) *Presence of foreign representative.* When inspection of personal baggage is permitted under subparagraph (2) of this paragraph, the inspection shall take place only in the presence of the affected representative of a foreign government, or his authorized agent. **[TD 89–1.]**

§ 148.83 Diplomatic and consular bags.

(a) *Diplomatic bags.* The contents of diplomatic bags are restricted to diplomatic documents and articles intended exclusively for official use and packages constituting the diplomatic bag must bear visible marks of their character. Diplomatic bags shall not be opened or detained nor shall they be subject to duty or entry.

(b) *Consular bags.* Consular bags must bear visible external marks of their character and their contents are restricted to official correspondence and documents or articles intended exclusively for official use. Consular bags shall not be subject to duty and ordinarily shall not be opened or detained. However, if Customs officers have serious reason to believe that a consular bag contains other than permissible materials, they may request that the bag be opened in their presence by an authorized representative of the foreign government concerned. If this request is refused, the consular bag shall be returned to its place of origin.

§ 148.84 Special treatment for returning individuals.

(a) Except as otherwise provided by law, an individual returning to the U.S. from abroad: **[TDs 76–325, 78–394.]**

(1) Shall not have his or her baggage and effects admitted free of duty without entry.

(2) Shall not be entitled to expedited Customs examination and clearance of his or her baggage and effects unless the district director finds:

(i) That the individual:

(A) Is seriously ill or infirm;

(B) Was summoned by news of affliction or disaster; or

(C) Is accompanying the body of a deceased relative; or

(ii) That a special circumstance exists which warrants expedited examination and clearance.

(b) For purposes of this section, the term "baggage and effects" means any article which was in the possession of the individual while abroad, is being imported in connection with his or her arrival, and is intended for his or her bona fide personal or household use. This term does not include any article imported as an accommodation to others or for sale or other commercial use.

§ 148.85 Subsequent importations for the personal or family use of diplomatic, consular and other privileged personnel.

The privilege of importing free of duty and without the filing of any entry articles for personal or family use, but not as an accommodation for others or for sale or other commercial use, shall be granted upon the request of the Department of State and upon appropriate instructions from the U.S. Customs Service in each instance, to the following:

(a) Ambassadors, ministers, charges d'affaires, secretaries, counselors and attachés of foreign embassies and legations accredited to the U.S. under subheading 9806.00.40, HTSUS (19 U.S.C. 1202);

(b) Other representatives, officers and employees of foreign governments, under subheading 9806.00.50, HTSUS (19 U.S.C. 1202); and

(c) Other persons designated pursuant to statute or pursuant to treaties between the U.S. and the countries which they represent, under subheading 9806.00.55, HTSUS (19 U.S.C. 1202). **[TD 89–1.]**

§ 148.86 Articles for official use of representatives of foreign governments and public international organizations.

Office supplies and equipment and other articles for the official use of members and attachés of foreign embassies and legations, consular officers, and other representatives

of foreign governments or of personnel of public international organizations, may be admitted free of duty under subheading 9809.00.20, HTSUS, without the filing of an entry, upon the request of the Department of State. **[TDs 82–145, 89–1.]**

§ 148.87 Officers and employees of, and representatives to public international organizations.

(a) *Exemption for baggage and effects.* The baggage and effects of the alien officers and employees of, or representatives of foreign governments, to the organizations designated by the President as public international organizations pursuant to § 1 of the International Organizations Immunities Act (22 U.S.C. 288), and the baggage and effects of their families, suites, and servants, shall be admitted free of duty and without entry under subheading 9806.00.15, HTSUS (19 U.S.C. 1202), but only upon the receipt in each instance of instructions from the U.S. Customs Service issued at the request of the Department of State. **[TD 89–1.]**

(b) *Designated public international organizations.* The President, by virtue of the authority vested in him by § 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), has designated certain organizations as public international organizations entitled to the free entry privileges of that statute. The following is a list of the public international organizations currently entitled to such free entry privileges and the Executive orders by which they were designated: (Sec. 1, 59 Stat. 669 (22 U.S.C. 288)). **[TDs 74–21, 74–113, 74–143, 75–220, 78–99, 85–123.]**

Organization	Executive Order	Date
African Development Bank	12403	Feb. 8, 1983
African Development Fund	11977	Mar. 14, 1977
Asian Development Bank	11334	Mar. 7, 1967
Caribbean Organization	10983	Dec. 30, 1961
Customs Cooperation Council	11596	June 5, 1971
European Space Research Organization (ESRO).	11760	Jan. 17, 1974
Food and Agriculture Organization	9698	Feb. 19, 1946
Great Lakes Fishery Commission	11059	Oct. 23, 1962
Inter-American Defense Board	10228	Mar. 26, 1951
Inter-American Development Bank	10873	Apr. 8, 1960
Inter-American Institute of Agricultural Sciences.	9751	July 11, 1946
Inter-American Statistical Institute	9751	Do.
Inter-American Tropical Tuna Commission.	11059	Oct. 23, 1962
Intergovernmental Maritime Consultative Organization.	10795	Dec. 13, 1958
International Atomic Energy Agency	10727	Aug. 31, 1957
International Bank for Reconstruction and Development.	9751	July 11, 1946
International Centre for Settlement of Investment Disputes.	11966	Jan. 19, 1977
International Civil Aviation Organization.	9863	May 31, 1947
International Coffee Organization	11225	May 22, 1965
International Cotton Advisory Committee.	9911	Dec. 19, 1947
International Cotton Institute	11283	May 27, 1966
International Development Association.	11966	Jan. 19, 1977
International Fertilizer Development Center.	11977	Mar. 14, 1977
International Finance Corporation	10680	Oct. 2, 1956
International Food Policy Research Institute—Limited Privileges only.	12359	Apr. 22, 1982
International Hydrographic Bureau	10769	May 29, 1958
International Joint Commission—U.S. and Canada.	9972	June 25, 1948
International Labor Organization	9698	Feb. 19, 1946
International Maritime Satellite Organization.	12238	Apr. 22, 1980
International Monetary Fund	9751	July 11, 1946
International Pacific Halibut Commission.	11059	Oct. 23, 1962
International Secretariat for Volunteer Service.	11363	July 20, 1967
International Telecommunications Satellite Organization (INTELSAT).	11966	Jan. 19, 1977
International Telecommunication Union.	9863	May 31, 1947
International Wheat Advisory Committee (International Wheat Council).	9823	Jan. 24, 1947
Multinational Force and Observers	12359	Apr. 22, 1982
Organization for Economic Cooperation (now known as the Organization for Economic Cooperation and Development).	10133	June 27, 1950
Organization of African Unity (OAU)	11767	Feb. 19, 1974
Organization of American States	10533	June 3, 1954
Pan American Health Organization (includes the Pan American Sanitary Bureau).	10864	Feb. 18, 1960
Pan American Union	10533	June 3, 1954
Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now known as the Intergovernmental Committee for European Migration).	10335	Mar. 28, 1952
South Pacific Commission	10086	Nov. 25, 1949
United International Bureau for the Protection of Intellectual Property.	11484	Sept. 29, 1969
United Nations	9698	Feb. 19, 1946
United Nations Educational, Scientific, and Cultural Organization.	9863	May 31, 1947
Universal Postal Union	10727	Aug. 31, 1957
World Health Organization	10025	Dec. 30, 1948
World Intellectual Property Organization.	11866	June 18, 1975
World Meterorological Organization	10676	Sept. 1, 1956

§ 148.88 Certain representatives to and officers of the United Nations and the Organization of American States.

(a) *Exemption for baggage and effects and admission without entry.* At the request of the Department of State and upon appropriate instructions from the U.S. Customs Service in each instance, the privilege of admission free of duty

without the filing of an entry may be extended to the baggage and effects of the following alien representatives, officers, and members of the staff of the United Nations and the Organization of American States, and their personal baggage is ordinarily exempt from inspection, subject to § 148.82(e)(2):

(1) Every person designated by a United Nations member nation as the principal resident representative to the United Nations of such member or as a resident representative with rank of ambassador or minister plenipotentiary and members of their families;

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General of the United Nations, the Government of the U.S., and the Government of the United Nations member concerned and members of their families;

(3) Every person designated by a United Nations member of a specialized United Nations agency as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the U.S. and members of their families;

(4) Such other principal resident representatives of United Nations members to a specialized United Nations agency and such resident members of the staffs of representatives to a specialized United Nations agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the U.S., and the Government of the United Nations member concerned and members of their families;

(5) The Secretary-General, Under Secretaries-General, and Assistant Secretaries-General to the United Nations and members of their families;

(6) Representatives of members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, while exercising their functions and during their journey to and from the place of meeting, with regard to personal baggage only;

(7) Experts performing missions for the United Nations, the same facilities for personal baggage as are accorded diplomatic envoys;

(8) Any person designated by a member of the Organization of American States as its representative or interim representative on the council of the Organization of American States and members of their families; and

(9) All other permanent members of the Delegation of a member of the Organization of American States and members of their families regarding whom there is agreement for that purpose between the government of the member state concerned, the Secretary-General of the Organization of American States, and the Government of the United States of America.

(b) *Absence of special request.* In the absence of a special request from the Department of State prior to the arrival of persons of the classes enumerated in paragraph (a) of this section, the privilege of admission free of duty without entry may be extended to their baggage and effects upon presentation of their credentials or other proof of identity.

(c) *Importations for personal or family use.* Upon the request of the Department of State and appropriate instructions from the U.S. Customs Service, the privilege of importing without entry and free of duty articles for their personal or family use but not as an accommodation for others or for sale or other commercial use may be granted to persons of the classes enumerated in paragraph (a) of this section except those in paragraph (a) (6) and (7), of this section, under subheading 9806.00.55, HTSUS (19 U.S.C. 1202).

(d) *Personal inviolability.* The person of the representatives to and officers of the United Nations and the Organization of American States set forth in paragraph (a) of this section shall be free from arrest, search, and detention except that persons of the rank set forth in paragraph (a) (6) and (7) of this section shall be accorded this privilege only while exercising their function and traveling to and from the place of meeting. **[TD 89–1.]**

§ 148.89 Property of public international organizations and foreign governments.

(a) *Exemption from duty.* Property of designated international organizations listed in paragraph (b) of § 148.87 or of foreign governments shall be admitted free of duty and internal-revenue taxes imposed upon or by reason of importation under 22 U.S.C. 288a(d), but such exemption shall be granted only upon the receipt in each instance of instruction from the U.S. Customs Service issued at the request of the Department of State.

(b) *Bond.* Any Customs bond which may be required from a designated international organization (see paragraph (b) of § 148.87) in connection with the importation or entry of merchandise into, or the exportation of merchandise from, the U.S. may be accepted without surety.

§ 148.90 Foreign military personnel.

(a) *Exemptions allowed.* District directors shall in accordance with the provisions of this section admit the following free of duty and internal revenue tax imposed upon or by reason of importation:

(1) The baggage and effects of persons on duty in the U.S. as members of the armed forces of any foreign country, and of their immediate families under subheading 9806.00.20, HTSUS (19 U.S.C. 1202);

(2) Articles entered or withdrawn from warehouse for consumption by a member of the armed forces of any foreign country on duty in the U.S., for his personal use or that of any member of his immediate family but not as an accommodation to others or for sale or other commercial use, under subheading 9806.00.45, HTSUS (19 U.S.C. 1202); and

(3) Articles entered or withdrawn from warehouse for consumption for the official use of members of the armed forces of any foreign country on duty in the U.S., under subheading 9809.00.30, HTSUS (19 U.S.C. 1202).

(b) *Reciprocity limitation.* When district directors have been advised officially of a finding by the Secretary of the Treasury that a foreign country does not reciprocate to members of the armed forces of the U.S. on duty in its country and members of their immediate families the privileges accorded its members and their families in the U.S., the district directors shall accord to the personnel of such foreign government privileges under the law only to the extent to which the foreign government accords similar treatment to members of the armed forces of the U.S. and members of their immediate families.

(c) *Status of importer questioned.* If any question arises as to the status of the importer under subheadings 9806.00.20, 9806.00.45 and 9809.00.30, HTSUS (19 U.S.C. 1202), or whether articles entered thereunder are for official use or for personal or family use, but not as an accommodation to others or for sale or other commercial use, the

district director shall report the available facts to the Commissioner of Customs for instructions.

(d) *Alcoholic beverages for personal or family use*—(1) *General rule*—(i) *Limitation stated.* Except in the case of exceptional circumstances set forth in paragraph (d)(2) of this section, entry of alcoholic beverages (other than malt beverages) for personal or family use but not as an accommodation to others or for sale or other commercial use under subheading 9806.00.45, HTSUS (19 U.S.C. 1202), is limited to one case each month.

(ii) *Advance entry or withdrawal.* A maximum of three cases (the initial one plus two cases in advance) may be entered or withdrawn at any one time in a given 3-month period if the district director is satisfied they are for personal or family use but not as an accommodation to others or for sale or other commercial use. Such advance entry or withdrawal shall not be deemed to broaden the one case per month limitation.

(iii) *Certification.* At the time of each entry or withdrawal, the member of the Armed Forces must certify that since his last entry or withdrawal there have expired a number of months equal to the numbers of cases last entered or withdrawn.

(2) *Exceptional circumstances.* In exceptional circumstances an additional quantity of alcoholic beverages for personal or family use but not as an accommodation to others or for sale or other commercial use, in excess of the one case per month limitation may be allowed under the following procedure:

(i) A statement signed by the member of the Armed Forces and attached to his declaration for free entry will be submitted to the district director, setting forth the reason for requesting the additional quantity;

(ii) The statement of request must be approved by the officer or person in charge of the Armed Forces involved, or a person specifically authorized by such officer or person to approve such requests; and

(iii) The district director must be satisfied that the need for the additional quantity is justified. Questionable cases shall be referred to the Commissioner of Customs for instructions.

(3) *Retention and verification of the warehouse proprietors' records.* The warehouse proprietor shall retain all records relating to the entry and withdrawal of alcoholic beverages under subheading 9806.00.45, HTSUS (19 U.S.C. 1202), for 3 years from the date of the entry against which the withdrawal of the alcoholic beverages is charged. Verification of the warehouse proprietors' records shall be at the discretion of the district director. **[TD 79–159.]**

(e) *Entry requirements.* The entry requirements prescribed in the Tariff Act of 1930, as amended (Title 19, United States Code), and the regulations thereunder are applicable to articles for which free entry is claimed under subheadings 9806.00.20, 9806.00.45, 9809.00.30, HTSUS (19 U.S.C. 1202). No invoices shall be required. **[TD 89–1.]**

Subpart J—Noncommercial Importations of Limited Value

§ 148.101 Applicability.

Each person, including a crewmember, arriving in the U.S. who enters articles for his personal or household use, or as bona fide gifts not imported for sale nor for the account of another person, valued in the aggregate at not over $1,000 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles, as provided in § 148.102. The entry shall be made under subheadings 9816.00.20 or 9816.00.40, HTSUS (19 U.S.C. 1202), and is subject to the limitations and conditions in this subpart. Except as provided in § 148.105, the flat rate of duty shall be assessed in place of rates of duty other than free rates of duty. If the dutiable amount of the article(s) is over $1,000 fair retail value, the flat rate of duty provisions shall apply to the amount not over $1,000 fair retail value, and the excess amount shall be valued under § 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a). The article(s) shall be classified under the appropriate item number of the tariff schedules. For purposes of this subpart, "fair retail value" in the country of acquisition means the price at which the merchandise is freely offered there for sale at retail and "country of acquisition" includes American Samoa, Guam, and the Virgin Islands of the U.S. **[TDs 78–394, 86–118, 87–89, 89–1.]**

Two examples of the application of this subpart are set forth below:

Example 1—B returned from Europe where he acquired merchandise having a fair retail value of $1,950. Assume for purposes of this example that (1) in addition to the personal exemption of $400, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, and (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate.

B presents his baggage to the Customs officer for examination and his declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $400 personal exemption	$400	
(b) Articles which have a free rate of duty	100	
(c) The $1,000 flat rate of duty calculated at 10 pct	1,000	$80
(d) Balance of articles subject to duty at rates other than flat rate	[1] 450	(1)
Total	[1] 1,950	(1)

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under sec. 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rates.

Example 2—Mr. and Mrs. B return from the U.S. Virgin Islands. During the trip, they acquired merchandise having a fair retail value of $4,100. Assume for purposes of this example that (1) in addition to the personal exemption of $800 for each returning resident, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate, and (4) Mrs. B made $400 in purchases on the trip, none of which carries a free rate of duty.

Mr. and Mrs. B present their baggage to the Customs officer for examination and their declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $800 personal exemptions for residents returning from the Virgin Islands are grouped for a total of	$1,600	
(b) Articles which carry a free rate of duty	100	
(c) The $1,000 flat rate of duty allowances calculated at 5 pct for persons arriving from the Virgin Islands are grouped for a total of	2,000	$80
(d) Balance of articles subject to duty at rates other than flat rates of duty	[1] 400	([1])
Total	[1] 4,100	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under sec. 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

§ 148.102 Flat rate of duty.

(a) *Generally.*—The rate of duty on articles accompanying any person, including a crewmember, arriving in the U.S. (exclusive of duty-free articles and articles acquired in Canada, American Samoa, Guam, or the Virgin Islands of the U.S.) shall be 10 percent of the fair retail value in the country of acquisition.

(b) *Insular possessions.*—The rate of duty on articles accompanying any person, including a crewmember, arriving in the U.S. directly or indirectly from American Samoa, Guam, or the Virgin Islands of the U.S. (exclusive of duty-free articles), acquired in these insular possessions as an incident of the person's physical presence there, shall be 5 percent of the fair retail value in the insular possession in which acquired.

(c) *Canada.* The rate of duty on originating goods from Canada (exclusive of duty-free goods) as defined in § 10.303 of this chapter, accompanying any person, including a crew member, arriving in the United States directly or indirectly from Canada shall be a flat rate of 9 percent as established by the United States-Canada Free-Trade Agreement. The flat rate shall decrease at the rate of one percent every year commencing on January 1, 1990, until January 1, 1998, at which time a free rate of duty shall apply. **[TD 89-3.]**

§ 148.103 Family grouping of allowances.

(a) *Generally.*—When members of a family residing in one household travel together on their return to the U.S., the flat rate of duty allowance will be grouped and allowed without regard to which member of the family is the owner of the articles. A group allowance shall not include an allowance for a family member not entitled to it in his own right, nor shall a group allowance be applied to any property of that member.

(b) *Members of a family residing in one household.*—"Members of a family residing in one household" shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the U.S.

§ 148.104 Frequency of use.

(a) *30-day period.*—The flat rate of duty shall not apply to a person who has used the provision within the 30-day period immediately prior to his arrival in the U.S. The date of the person's last arrival on which he declared articles for which the flat rate of duty was applicable shall be considered the date that rate was last used.

(b) *Computation of time.*—The 30-day period immediately prior to the person's arrival in the U.S. shall be computed by excluding the day of arrival and counting backward 30 days.

(c) *Remainder not applicable to subsequent journey.*—A person who has received a flat rate of duty allowance of less than $800 in connection with his return from one journey is not entitled to apply the remainder to articles acquired abroad on a subsequent journey. **[TD 86-118.]**

§ 148.105 Procedure for excluding articles from flat rate of duty.

(a) *Generally.*—Any person who has information that merchandise is being imported into the U.S. under the provisions of subheading 9816.00.20 or 9816.00.40, HTSUS (19 U.S.C. 1202), and this subpart which adversely affects the economic interest of the U.S. may communicate the information in writing to the Commissioner of Customs, Attention: Office of Operations, Washington, D.C. 20229.

(b) *Content of communication.*—The communication to the Commissioner need not be in any particular form but shall contain the following:

(1) The name of the individual and the person, firm, or association the individual represents, if any;

(2) The nature of the individual's interest in the matter, if any;

(3) A description of the merchandise, which it is alleged affects the economic interest of the U.S. adversely, including item numbers of the tariff schedules, if known;

(4) The country of acquisition and the ports and dates of entry of the merchandise, if known; and

(5) A statement and supporting evidence as to the manner in which the individual believes the economic interest of the U.S. is being adversely affected.

(c) *Inquiry to be conducted.*—Upon receipt of a communication containing the information required by paragraph (b), an inquiry will be conducted.

(d) *Negative determination.*—If the inquiry results in a finding that no reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is adversely affecting the economic interest of the U.S., the inquirer shall be advised in writing of the finding and the matter shall be closed.

(e) *Publication of tentative finding.*—If the inquiry results in a finding by the Secretary of the Treasury that reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is affecting the economic interest of the U.S. adversely, a notice of the finding will be published in the ***Federal Register*** and ***Customs Bulletin***, along with a statement of intent to exclude the articles from application of the flat rate of duty provisions. Interested persons will be given an opportunity to submit written comments on the notice.

(f) *Final determination.*—Based upon the comments received and the results of any additional inquiry as may be

necessary, if it is determined by the Secretary of the Treasury that application of the flat rate of duty provisions adversely affects the economic interest of the U.S., a Treasury decision will be published in the ***Federal Register*** and ***Customs Bulletin*** announcing that the merchandise will be excluded from application of the flat rate of duty provisions. Excluded articles of merchandise shall be listed in § 148.106. If it is determined by the Secretary of the Treasury that a valid basis for excluding the merchandise from the flat rate of duty provisions does not exist, the notice proposing to exclude the article will be withdrawn by publishing a notice in the ***Federal Register*** and the ***Customs Bulletin***. **[TD 89-1.]**

§ 148.106 Excluded articles of merchandise.

The following articles of merchandise have been found to affect the economic interest of the U.S. adversely, and they are excluded from the application of the flat rate of duty provisions.

(Reserved for listing.)

Subpart K—Unaccompanied Shipments from American Samoa, Guam, or the Virgin Islands of the U.S.

§ 148.110 Applicability.

The provisions of this subpart are applicable to articles not accompanying a person, including a crewmember, which are purchased in and shipped from American Samoa, Guam, or the Virgin Islands of the U.S. However, this subpart is not applicable to the importation of unaccompanied articles in a manner prohibited by law or regulation (e.g., mail shipments of alcoholic beverages or alcoholic beverages shipped other than by mail in excess of quantities authorized by state laws or regulations). **[TD 78-394.]**

The following is a summary of the procedure to be followed to obtain the benefits of this subpart: A person purchasing articles in American Samoa, Guam or the Virgin Islands of the U.S. would receive a sales slip, invoice or other evidence of purchase which he would present to the Customs officer along with his baggage declaration, Customs Form 6059-B, and a Declaration of Unaccompanied Articles, Customs Form 255. The latter form is prepared in triplicate for each shipment to follow. The Customs officer would verify the information, indicate on the form whether the article or articles were free of duty, dutiable at the flat rate, or a combination of the foregoing, and validate the form. Two copies would be returned to the traveler, who would send one form to the vendor. Upon receipt of the form the vendor would place it in an envelope, affix it to the outside of the package, clearly mark the package "Unaccompanied Tourist Shipment," and send the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by Customs and forwarded to the Postal Service for delivery. Any duties due would be collected by the mailman. If the shipment arrives other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

§ 148.111 Written declaration for unaccompanied articles.

The baggage declaration, Customs Form 6059-B, of a person (the crewmembers declaration, Customs Form 5129, in the case of a returning crewmember) arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the U.S. shall be in writing if it covers articles which do not accompany him and:

(a) The articles are entitled to free entry under the $800 exemption provided by subheading 9804.00.70, HTSUS (19 U.S.C. 1202), or

(b) The articles are noncommercial importations of limited value subject to a flat rate of duty under subheading 9816.00.40, HTSUS. **[TDs 86-118, 89-1.]**

§ 148.112 Evidence of purchase.

A sales slip, invoice, or other evidence of purchase, shall be presented with the declaration for all unaccompanied articles.

§ 148.113 Declaration, entry and collection of duty.

(a) *Declaration and entry for unaccompanied articles.*

(1) *Declaration.*—A baggage declaration covering articles for which a claim of free entry, in whole or in part, is made under the $800 exemption provided by subheading 9804.00.70, HTSUS (19 U.S.C. 1202), or a baggage or crewmembers declaration covering articles for which the flat rate of duty provision of subheading 9816.00.40, HTSUS appears to be applicable, shall be accompanied by a Declaration of Unaccompanied Articles, Customs Form 255. Customs Form 255 shall be prepared in triplicate by the vendor or declarant for each shipment of declared articles not accompanying the person. A shipment consists of one or more packages or containers sent as a unit.

(2) *Verification.*—The Customs officer shall verify the information from the declaration, sales slip, invoice, or other evidence of purchase furnished by the person. The completed Customs Form 255 shall be validated by the Customs officer and two copies given to the person.

(b) *Collection of duty.*—Duties shall be collected before release of the articles, after their arrival in the U.S., as provided in § 145.12 or 148.115. **[TDs 86-118, 89-1.]**

§ 148.114 Shipment of unaccompanied articles.

One copy of the validated Customs Form 255 shall be returned to the vendor. The vendor shall place the form in an envelope, affix it to the outside of the shipment, and clearly mark the outside of the shipment "Unaccompanied Tourist Shipment."

§ 148.115 Release of shipment.

(a) *Release after examination.*—Unaccompanied tourist shipments—

(1) To which the personal exemption provided in subheading 9804.00.70, HTSUS (19 U.S.C. 1202), is applicable, or

(2) For which entry is made under the flat rate of duty provisions of subheading 9816.00.40, HTSUS, or under those provisions in conjunction with the regular rate of duty provision of another item of the tariff schedules, shall be released if:

(i) The shipment is properly marked and accompanied by a validated copy of Customs Form 255,

(ii) The examining Customs officer is satisfied that the contents of the shipment are as stated on the Customs Form 255 and, if applicable, that they are properly classified,

(iii) The declared value conforms to the fair retail value in the country of acquisition, and

(iv) In respect to shipments for which entry is made under subheading 9816.00.40, HTSUS, any duties found to be due are paid.

(b) *Removal of Customs Form 255.*—The copy of Customs Form 255 attached to the shipment shall be removed by the Customs officer and retained for Customs purposes.

(c) *Missing Customs Form 255.*—If a validated copy of Customs Form 255 does not accompany the shipment, entry shall be made under the provisions of part 141 or 145 of this chapter.

(d) *Restricted or prohibited shipments.*—No shipment containing prohibited or restricted merchandise for which exemption is claimed under subheading 9804.00.70, HTSUS (19 U.S.C. 1202), or for which entry is claimed under subheading 9816.00.40, HTSUS, shall be released except upon compliance with the provisions of part 12 and §§ 145.51 through 145.59 of this chapter, and other applicable laws and regulations.

(e) *Verification of claim.*—The district director may withhold release of any shipment for which exemption is claimed under subheading 9804.00.70, HTSUS (19 U.S.C. 1202), or for which entry is claimed under subheading 9816.00.40, HTSUS, to verify the validity of the claim. If he is unable to verify the claim, the merchandise shall be released under the provisions of part 141 or 145 of this chapter. **[TD 89-1.]**

§ 148.116 Claim for refund.

Any person who has filed a declaration of unaccompanied articles under §§ 148.112 and 148.113 and who is dissatisfied with the amount of duty assessed on the articles upon their arrival in the U.S. may file a claim for administrative review under subpart C, part 145, of this chapter if the articles arrived by mail, or under parts 173 and 174 if the articles arrived other than by mail. Any supporting documents, including a copy of Customs Form 255, should be submitted with the claim.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

Sec.

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Authority: 19 U.S.C. 66, 1202 (General Notes 9 and 10, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499. Subpart D also issued under additional U.S. Notes to Chapter 26, HTSUS; 19 U.S.C. 1202. Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. Subpart F also issued under Additional U.S. Notes to Chapter 52, HTSUS; 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73-175, 38 FR 17470, July 2, 1973, unless otherwise noted.

§ 151.0 Scope.

This part sets forth general provisions governing the examination and sampling of imported merchandise, as well as specific provisions governing the examination, sampling, and testing of certain particular types of merchandise. [TD 73-175.]

Subpart A—General

§ 151.1 Merchandise to be examined.

The district director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service.

§ 151.2 Quantities to be examined.

(a)(1) *Minimum quantities.* Not less than one package of every 10 packages of merchandise shall be examined, unless a special regulation permits a lesser number of packages to be examined. District directors are specially authorized to examine less than one package of every 10 packages, but not less than one package of every invoice, in the case of any merchandise which is:

(i) Imported in packages the contents and values of which are uniform, or

(ii) Imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(2) *Exceptions to minimum quantities.* At ports of entry specifically designated by the Commissioner of Customs,

the district director is authorized to release, without examination, merchandise of a character which the district director has determined need not be examined in every instance to ensure the protection of the revenue and compliance with the Customs laws and any other laws enforced by the Customs Service. [TD 81-240.]

(b) *Nonprivileged foreign merchandise from foreign-trade zone.* When a portion of a zone lot of nonprivileged foreign merchandise covered by one invoice, the contents and value of packages of which are uniform or the merchandise is identical as to character although differing as to quantities and value per package, has been entered and packages or quantities have been examined, the district director may, if he considers further examination unnecessary, permit subsequent entries for consumption from such zone lot of merchandise to be made by the same importer at the same port of entry on the basis of the first examination. Each subsequent portion of such a zone lot of merchandise shall identify the first consumption entry made by the importer of a portion of the lot.

(c) *Additional quantities.* Paragraphs (a) and (b) of this section shall not be construed to prevent the district director from examining more than the minimum number of packages required if he deems it necessary.

§ 151.3 Disclosure of examination packages.

Information as to the particular packages which will be examined shall not be made available to the importer, his agent, or any person other than Customs officers necessarily concerned, until the merchandise has arrived within the limits of the port of entry.

§ 151.4 Time of examination.

Imported merchandise shall not be opened, examined, or inspected until it has been entered under some form of entry for consumption or warehouse, except in the following cases:

(a) *Official Government examination and sampling.* Authorized employees of the Customs Service, Food and Drug Administration, Animal and Plant Health Inspection Service, Public Health Service, or other Government agency may for official purposes examine or take samples of merchandise for which entry has not been filed, including merchandise being released under a special permit for immediate delivery.

(b) *Perishable merchandise, benzenoid chemicals, and merchandise received without an invoice.* An application by the importer to examine merchandise, whether or not covered by an entry for transportation in bond or for exportation, may be granted by the district director, under the conditions listed in § 151.5, in the following cases:

(1) Examination of perishable merchandise is desired solely to determine its condition. This is not limited to a single examination, and there is no objection to incidental display to prospective buyers during the examination.

(2) The importer desires to sample benzenoid chemicals or products in accordance with § 152.35 of this chapter prior to making an entry for consumption or warehouse.

(3) The importer has been unable to obtain the required documents or information to make the necessary entry, and examination of the merchandise is required to obtain information for the preparation of a pro forma invoice to be used in making entry.

(c) *Examination of merchandise entered for transportation under bond or for exportation*—(1) *Examination, sampling, weighing or emergency operation.* As a bona fide incident to exportation or further transportation, the importer of merchandise entered or withdrawn for transportation under bond or for exportation may, upon written application to the district director supported by a valid business reason for the request, be permitted to examine, sample, weigh, or subject his merchandise to an operation required by reason of an emergency, provided that any operation performed on the merchandise does not constitute a manufacture, and that § 151.5 is complied with. For conditions governing transshipment and emergency access to the shipment by the carrier, see § 18.3 of this chapter.

(2) *Nonemergency operation.* In cases not involving an emergency, an operation not constituting a manufacture may be permitted under the conditions listed in subparagraph (1) of this paragraph if neither the protection of the revenue nor the proper conduct of Customs business requires that the operation be done in a Customs bonded warehouse, provided that the importer's written application for such operation is approved by both the district director and the Commissioner of Customs.

§ 151.5 Conditions for examination prior to entry.

Examination, sampling, weighing, or operation upon merchandise at the importer's request prior to entry for consumption or warehouse, as provided for in § 151.4 (b) and (c), shall be subject to the following conditions:

(a) The operation permitted shall be executed under Customs supervision;

(b) If the merchandise is in possession or joint possession of a carrier or container station operator, the concurrence of such carrier or operator shall be obtained; and

(c) The Government shall be reimbursed for the compensation, computed in accordance with § 19.5(b) of this chapter, and other expenses of the Customs officer or employee supervising the action permitted.

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required by the district director or authorized in accordance with § 151.7 of this part. Except where the merchandise is required by the district director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination and in the closing of packages. [TD 84-152.]

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The district director may authorize examination at a place other than at the place of arrival or the public stores, such as at the importer's premises. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

(a) *Sealing of packages.* If examination is to be made at the importer's premises or other place not under control of a Customs officer, the district director may require the packages to be corded and sealed by a Customs officer before the packages are removed from the place of arrival. The packages shall be opened only in the presence of the Customs officer authorized to examine their contents.

(b) *Preparation for Customs examination and closing of packages.* Except when merchandise is required by the district director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits.* If the place of examination is not located within the limits of a port of entry or at a Customs station at which a Customs officer is permanently located, whether or not that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than $1, a minimum charge of $1 will be made.

(d) *Bond for removal from Customs custody.* Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place in charge of a Customs officer, the district director shall require the importer to execute a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. **[TDs 84–213, 84–152.]**

§ 151.8 Examination after assembly.

(a) *Application by importer.* Upon application by the importer, machinery, altars, shrines, and other articles which must be set up or assembled prior to examination may be examined at the mill, factory, or other suitable place after being assembled.

(b) *Conditions applicable.* The importer shall comply with the conditions set forth in § 151.7 (b) through (d). The district director may also require that a deposit be made of the estimated additional expense. The packages need not be corded and sealed in accordance with § 151.7(a), but the district director may make such preliminary examination as he deems necessary to identify the merchandise with the invoice.

(c) *Removal of merchandise and notification of assembly.* After the bond required by § 151.7(d) has been filed and any necessary preliminary examination has been made, the district director may permit the merchandise to be removed to the place at which it is to be assembled for examination. Within 90 days after such removal, unless an extension has been applied for and granted by the district director, the importer shall notify the district director that the merchandise has been assembled and is ready for examination, whereupon final examination shall be made.

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the district director to be delivered to a place outside a port of entry as provided for in § 18.11(c) of this chapter, the provisions of § 151.7 shall be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place where a Customs officer is stationed.

§ 151.10 Sampling.

When necessary, the district director may obtain samples of merchandise for appraisement, classification, or other official purposes. Samples shall be taken by a Customs officer or a commercial gauger approved in accordance with § 151.13. Samples shall be marked to ensure identification and retained according to established policies. **[TD 87–39.]**

§ 151.11 Request for samples or additional examination packages after release of merchandise.

If the district director requires samples or additional examination packages of merchandise which has been released from Customs custody, he shall send the importer a written request, on Customs Form 28, Request for Information, or other appropriate form, to submit the necessary samples or packages. If the request is not promptly complied with, the district director may make a demand under the bond for the return of the necessary merchandise to Customs custody in accordance with § 141.113 of this chapter. **[TDs 75–152, 84–213.]**

§ 151.12 Benzenoid chemicals and products.

Additional procedures for sampling and testing of benzenoid chemicals and products are set forth in subpart D of Part 152 of this chapter.

§ 151.13 Commercial gaugers and commercial laboratories.

Commercial gaugers are commercial organizations and individuals who measure, gauge, or sample merchandise. (The term "public gauger" has been used to denote a type of commercial gauger dealing mainly with petroleum and petroleum products. "Public gaugers" are commercial gaugers and are subject to the regulations in Part 151.) Commercial laboratories are commercial organizations and individuals who analyze merchandise, i.e., determine its composition and/or characteristics through laboratory analysis. Commercial gaugers may own and operate commercial laboratories and vice versa. They may be approved or accredited, respectively, as a single organization, but each part of the organization is subject to the appropriate requirements of Part 151.

(a) *Acceptance of reports.* Provided that the commercial gauger or laboratory has complied with the appropriate provisions of the Customs Regulations, and in the absence of clear evidence that the District Director should not do so, the District Director shall accept the reports as described in the following paragraphs.

(1) Customs shall accept, from Customs-approved commercial gaugers, gauging reports of the net landed quantity of the products described below, except that in the case of crude petroleum of Heading 2709, the gross quantity may be accepted; see § 151.47. Reports shall be given in the appropriate Harmonized Tariff Schedule units of quantity, e.g., liters, barrels, and kilograms.

HTSUS	Product	Unit of Quantity
1501 through 1515	animal and vegetable oils	—kilogram
2707.10 through 2707.30 and 2902.20 through 2902.44.	benzene, toluene, and xylene	—liter
2709	crude petroleum	—barrel
2710 (various subheadings)	Such as fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—barrel
Chapter 29 (various)	organic compounds in bulk and in liquid form	—kilogram, liter, etc.

(2) Customs shall accept, from Customs-accredited commercial laboratories, laboratory analysis reports giving the characteristics of the products described below when determined according to the analysis methods indicated. In cases where neither a published commercial method such as an ASTM procedure nor an Official Customs Laboratory Method (OCLM) is indicated, the commercial laboratory shall use a method of analysis which has been approved for use in Customs-related transactions by the Director, Office of Laboratories and Scientific Services. OCLM's and approved methods will be made available to the public under the Freedom of Information Act (5 U.S.C. 552) and 19 CFR, Part 103. Methods published by organizations such as ASTM, API, TAPPI, ICUMSA, and similar organizations, are not available from Customs.

HTSUS	Product	Characteristic (Analysis Method)
1701	sugar (sucrose, raw sugar)	—polarization of sugar in sugar degrees (ICUMSA method entitled "Polarization of Raw Sugar")
1703	molasses	—percent soluble nonsugar solids
		—percent total sugars
		—weight per gallon in air at 60°F
2707.10 through 2707.30 and 2902.20 through 2902.44.	benzene, toluene and xylene	—distillation characteristics (ASTM D 86)
		—xylene isomer content (ASTM D 2306 or equivalent)
		—percent composition by weight (ASTM D 2360, D 3797, D 3798, D 4492 or equivalents)
2709	crude petroleum	—water by distillation (ASTM D 4006)
		—sediment and water (ASTM D 96)
		—API gravity (ASTM D 287)
		—sediment by extraction (ASTM D 473)
2710 (various subheadings)	Such as, fuel oil, motor fuel, kerosene, naptha, and lubricating oils.	—distillation characteristics (ASTM D 86)
		—water by distillation (ASTM D 95)
		—sediment and water (ASTM D 96)
		—API gravity (ASTM D 287)
		—Reid vapor pressure (ASTM D 323)
		—Saybolt universal viscosity (ASTM D 445 and D 2161)
		—sediment by extraction (ASTM D 473)
		—percent by weight sulfur (ASTM D 1266, ASTM D 2622, or ASTM D 3120)
		—percent by weight lead (ASTM D 2547, ASTM D 2599, or ASTM D 3341)
		—antiknock index (ASTM D 2699 (RON) and ASTM D 2700 (MON); see ASTM D 439)
Chapter 29 (various subheadings)	organic compounds in bulk and in liquid form	—identity using HTSUS descriptions or common or IUPAC nomenclature

HTSUS	Product	Characteristic (Analysis Method)
		—composition, giving percent by weight of each component (Various methods published by ASTM, API, AOAC, USP, and similar organizations, may be used for identity and composition, e.g., ASTM D 2593 for butadiene, D 2192 for aldehydes, ketones, and similar substances. Approved methods involving gas or liquid chromatography, infrared spectroscopy, mass spectrometry, nuclear magnetic resonance spectrometry, and various "wet" chemical procedures and physical tests, e.g., refractive index, and melting point, may also be used.)
4801	standard newspring	—weight per area (grammage) in g/m² (TAPPI T 410) —thickness in mm (TAPPI T 411) —ash (TAPPI T 413) —sizing by water transudation via ground glass method (TAPPI T 432) —Bekk smoothness (TAPPI T 479)

[TD 89-1.]

(b) *Approval of commercial gaugers and commercial laboratories.* Commercial gaugers seeking approval and commercial laboratories seeking accreditation shall send a letter of application to the U.S. Customs Service, Attention: Director, Office of Laboratories and Scientific Services, Washington, DC 20229. Applications shall include:

(1) The applicant's legal name and the addresses of the principal place of business and any other facilities;

(2) A statement of:

(i) The services to be provided (e.g., gauging, laboratory analysis, etc.);

(ii) The commodities to be gauged, sampled, or analyzed (e.g., petroleum and petroleum products);

(iii) The characteristics to be determined (e.g., distillation characteristics, the amount of sediment and water, etc.); and

(iv) References to the procedures to be used (e.g., ASTM D 1085: Ga(u)ging Petroleum and Petroleum Products, ASTM D 86: Distillation of Petroleum Products, etc.);

(3) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers; other commercial gaugers, laboratories, or samplers; producers; refiners; Customs brokers; carriers; etc.;

(4) A statement of financial condition;

(5) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(6) The names (or titles) and qualifications of each person who will be authorized to sign or approve gauging or analysis reports on behalf of the commercial gauger or laboratory;

(7) A complete description of the applicant's facilities, instruments, and equipment;

(8) A bond executed in accordance with Part 113, Customs Regulations (19 CFR Part 113); and

(9) A written agreement in the following form to avoid conflict-of-interest situations and to comply with requirements prescribed by Customs:

Commercial Gauger (Laboratory) Agreement

As conditions for approval (accreditation), I agree:

• To have no financial interest in or other connection with any business or other activity which might affect the unbiased performance of my duties as a Customs-approved (-accredited) commercial gauger (laboratory). I understand that this does not prohibit my accepting the usual fee for professional services.

• To comply with the requirements of Part 151, Customs Regulations (19 CFR Part 151), and to conduct my professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director, Office of Laboratories and Scientific Services.

• To maintain the ability, i.e., the instruments, equipment, qualified staff, facilities, etc., to perform the services for which I am approved (accredited) and to allow my performance to be evaluated by the Director, Office of Laboratories and Scientific Services, on a periodic basis by such means as on-site inspections, demonstrations of gauging (analysis) procedures, reviews of submitted records, and proficiency testing through check-samples.

• To notify both the district director and the Director, Office of Laboratories and Scientific Services, of any attempt to impede, influence, or coerce me in the performance of my duties immediately.

• To investigate any circumstances which might affect the accuracy of my work promptly; to correct the situation immediately and to notify both the district director and the Director, Office of Laboratories and Scientific Services, of such matters, their consequences, and any action taken immediately.

• To notify the Director, Office of Laboratories and Scientific Services, by certified mail within 5 days of any major changes involving legal name; address; ownership; parent-subsidiary relationships; bond; other offices; managerial, professional, or executive staff; approved signatories; facilities, instruments, or equipment; etc.

(c) *Combined approval and accreditation.* An organization having both gauging offices and laboratories may apply for approval and accreditation, respectively, in a single submission. Each part of the organization must meet and maintain the appropriate qualifications and technical and operational requirements, but any requirement imposed on the organization as a whole (e.g., the bond) may be met with one document.

(d) *Determination of competence.* The Director, Office of Laboratories and Scientific Services, shall determine the applicant's competence, independence, and reputation by use of appropriate techniques, including background investigations by Customs Office of Investigations.

(e) *Notice of conditional approval.* The Director, Office of Laboratories and Scientific Services, shall issue conditional approval or accreditation within 60 days of receiving a complete and acceptable application package, including a bond. Gaugers and laboratories may operate under conditional approval or accreditation for no more than 6 months or until their permanent approval or accreditation is issued or disapproved. While under conditional approval or accreditation, gaugers and laboratories are subject to all of the requirements of this Part, and their conditional approval or accreditation may be suspended or revoked for cause [see § 151.13(k)], for failure to comply with any provision of this Part, or if Customs evaluation uncovers disqualifying factors.

(f) *Notice of approval, disapproval, suspension, or revocation.* When Customs evaluation of the applicant is complete, the Director, Office of Laboratories and Scientific Services, shall notify the applicant that his application has been approved or given the reasons for disapproval. Approvals or accreditations may be suspended or revoked at any time for cause [see § 151.13(k)] or for failure to comply with any provision of this Part, and liquidated damages may be assessed under the commercial gauger's or laboratory's bond. Notices of approval, suspension, and revocation shall be published in the ***Federal Register*** and the ***Customs Bulletin.***

(g) *Technical and operational requirements.* To be approved and to maintain approval, a commercial gauger or laboratory shall conform to the following:

(1) *Equipment.* The commercial gauger or laboratory shall be equipped with all instruments and equipment needed to conduct approved services and analyses according to appropriate standards published by recognized standards-writing organizations such as the American Society for Testing and Materials (ASTM), the American Petroleum Institute (API), the International Commission for Uniform Methods of Sugar Analysis (ICUMSA), or the American National Standards Institute (ANSI). The commercial gauger or laboratory shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(2) *Procedures.* The commercial gauger or laboratory shall comply in all respects with appropriate procedures published by ASTM, API, etc., and with specific procedures required by the Director, Office of Laboratories and Scientific Services, under paragraph (h) of this section.

(3) *Facilities.* The commercial gauger or laboratory shall conduct his services in facilities which have adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed in the appropriate procedures.

(4) *Personnel.* The commercial gauger or laboratory shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing gauging services or laboratory analyses, evaluating gauging or analytical results, signing gauging or analysis reports on behalf of the commercial gauger or laboratory, etc.). In general, gauging staff should have a minimum of six (6) months training and experience in gauging, and laboratory staff should have a bachelor's degree in the sciences or two years related experience in an analytical laboratory.

(h) *Specific procedures.* The Director, Office of Laboratories and Scientific Services, may require commercial gaugers or laboratories to follow specific procedures if warranted by local circumstances. Commercial gaugers or laboratories may request that such procedures be imposed if they believe that such procedures are warranted. Commercial gaugers or laboratories also may request the Director to review the imposition of specific procedures or delay their implementation.

(i) *Recordkeeping requirements.* The commercial gauger or laboratory shall maintain records of the type normally kept in the ordinary course of business. In addition, the commercial gauger or laboratory shall maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records shall be maintained for five (5) years in accordance with §§ 162.1a through 162.1c of this chapter.

(1) *Transaction records.* Records for each Customs-related transaction, including samples, must have the following:

(i) A unique identifying number;

(ii) The date and location where the transaction occurred or the sample was received or taken;

(iii) The identity of the product (e.g., crude oil);

(iv) The name of the client; and

(v) The source of the sample (e.g., name of vessel, flight number of airline, name of individual taking the sample, etc.).

If available, records for each Customs-related transaction, including samples, should have the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(2) *Major instrument records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must have the name and type of the instrument, the manufacturer's name, the instrument's model and serial numbers, and the details (names, dates, etc.) of all major servicing, recalibration, etc.

(3) *Records of gauging and analytical procedures.* The commercial gauger or laboratory must maintain complete and up-to-date copies of all approved gauging and analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform.

(4) *Gauging and laboratory analysis records.* The commercial gauger or laboratory must identify by number (see paragraph (i)(1)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related gauging transaction or laboratory analysis. Each gauging and analysis record (i.e., the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(5) *Gauging and laboratory analysis reports.* Each gauging or laboratory analysis report submitted to Customs must include:

(i) The name and address of the commercial gauger or laboratory;

(ii) A description and identification of the sample, including its unique identifying number;

(iii) The designations of each gauging or analysis procedure used;

(iv) The gauging or analysis report itself (i.e., the quantity and/or the characteristics of the sample);

(v) The date of the report; and

(vi) The initials or signature of the person accepting technical responsibility for the gauging or analysis report (i.e., an approved signatory).

(j) *Verification requirement.* To ensure compliance with Part 151 and the accuracy of the information submitted to Customs by commercial gaugers and laboratories, the Director, Office of Laboratories and Scientific Services, may conduct on-site inspections, record reviews, periodic check samples, etc.

(k) *Suspension or revocation of Customs approval or accreditation*—(1) *Grounds.* If a commercial gauger's or laboratory's reports are repeatedly inaccurate to a significant degree, or if the gauger or laboratory fails to comply with any applicable provision of the Customs Regulations (19 CFR Chapter I), the Director, Office of Laboratories and Scientific Services may suspend or revoke the commercial gauger's approval or the commercial laboratory's accreditation in its entirety, or the Director may suspend or revoke one or more of the gauger's or laboratory's facilities or field offices.

(2) *Notice.* The Director shall give the commercial gauger or laboratory a notice containing specific written grounds for the proposed suspension or revocation, the scope of the proposed suspension or revocation, and all procedures and timeliness for appeal and review.

(3) *Appeal.* The commercial gauger or laboratory has 30 days from the date of the notice to file a written appeal to the Director. The appeal may contain an acceptance of responsibility and may also provide extenuating circumstances and rebuttal evidence. In addition, this appeal may ask for a meeting with the Director or his designee to discuss the proposed action. Failure to file an appeal within 30 days may result in the suspension or revocation of the commercial gauger's approval or the commercial laboratory's accreditation.

(4) *Response.* If the Director accepts the commercial gauger's or laboratory's appeal, he shall notify the gauger or laboratory immediately and close the case. If not, he shall notify the gauger or laboratory within 30 days of receipt of the appeal and advise him of his right to file a written petition to the Commissioner to review the proposed action.

(5) *Commissioner's review.* The commercial gauger or laboratory has 30 days from the date of the Director's response to file (with the Director) a written petition for the Commissioner to review the proposed action. The Commissioner or his designee shall review the petitioner and shall forward the written decision to the Director for implementation.

(6) *Publication.* The Director shall publish notice of suspensions or revocations of a commercial gauger's approval or a commercial laboratory's accreditation in the ***Federal Register*** and the ***Customs Bulletin,*** giving the effective date, duration, and scope of each such action.

(l) *Additional services and commodities.* (1) Customs will consider adding additional services or commodities to those set out in § 151.13(a) upon the submission of a request setting out the scope of the services or commodities being proposed, the identification of the specific standards and procedures that would be used, and technical and economic reasons why Customs should add the services or commodities.

(2) Currently-approved commercial gaugers and currently-accredited commercial laboratories which are approved or accredited to gauge or analyze certain commodities may request the Director, Office of Laboratories and Scientific Services, to approve or accredit them to gauge or analyze additional commodities listed in § 151.13(a) by sending the Director a letter describing their proposal and giving the information set out in paragraphs (b)(1), (b)(2), (b)(6), and (b)(7) of § 151.13.

(m) *Costs of using Customs-approved commercial gaugers or Customs-accredited commercial laboratories.* No expense incurred by the use of a Customs-approved commercial gauger or a Customs-accredited commercial laboratory shall be borne by the Government. **[TDs 87-39, 89-1.]**

§ 151.14 Use of commercial laboratory tests in liquidation.

The characteristics of products as set out in § 151.13(a)(2) and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between these characteristics and those found by the Customs laboratory does not exceed the differences in the following table:

Analysis Method	Characteristic	Difference between Customs Value and Commercial Laboratory's Value
ASTM D 96	Sediment & water	0.11 percent
ICUMSA	Polarization	0.4 sugar degree
ICUMSA or AOAC	Total sugars	2.0 percent total

If the difference exceeds these values and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used. **[TDs 87-39, 89-1.]**

Subpart B—Sugars, Sirups, and Molasses

§ 151.21 Definitions.

The following are general definitions for the purposes of this subpart in applying the provisions of Chapters 17 and 18, HTSUS (19 U.S.C. 1202):

(a) *Degree.* "Degree" or "sugar degree" means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

(b) *Total sugars.* "Total sugars" means the sum of the sucrose, the raffinose, and the reducing sugars. **[TD 89-1.]**

§ 151.22 Estimated duties on raw sugar.

Estimated duties shall be taken on raw sugar, as defined in Subheading Note 1 to Chapter 17, HTSUS, on the basis of not less than 96° polariscopic test unless the invoice

shows that the sugar is of a lower grade than that of the ordinary commercial shipment. [TD 89–1.]

§ 151.23 Allowance for moisture in raw sugar.

Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of raw sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if made after the sugar claimed to have been damaged has been weighed.

§ 151.24 Unlading facilities for bulk sugar.

When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Commissioner of Customs as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

§ 151.25 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.

§ 151.26 Molasses in tank cars.

When molasses is imported in tank cars, the importer shall file with the district director a certificate showing whether there is any substantial difference either in the total sugars or the character of the molasses in the different cars.

§ 151.27 Weighing and sampling done at time of unlading.

Sugar, sirup, and molasses requiring either weighing or sampling shall be weighed or sampled at the time of unlading. When such merchandise requires both weighing and sampling, these operations shall be performed simultaneously.

§ 151.28 Gauging of sirup or molasses discharged into storage tanks.

(a) *Plans of storage tank to be filed.* When sirup or molasses is imported in bulk in tank vessels and is to be pumped or discharged into storage tanks, before the discharging is permitted there shall be filed with the district director a certified copy of the plans and gauge table of the storage tank showing all inlets and outlets and stating accurately the capacity in liters per centimeter of height of the tank from an indicated starting point. [TDs 80–142, 89–1.]

(b) *Settling before gauging.* After the discharge is completed, all inlets to the tank shall be carefully sealed and the sirup or molasses left undisturbed for a period not to exceed 20 days to allow for settling before being gauged. When a request for immediate gauging is made in writing by the importer, it shall be allowed by the district director. [TD 80–142.]

§ 151.29 Expense of unlading and handling.

No expense incidental to the unlading, transporting, or handling of sugar, sirup, or molasses for convenient weighing, gauging, measuring, sampling, or marking shall be borne by the Government. [TD 80–142.]

§ 151.30 Sugar closets.

Sugar closets for samples shall be substantially built and secured by locks furnished by Customs. They shall be conveniently located as near as possible to the points of discharge they are intended to serve. They shall be provided by the owner of the premises on which they are located and shall be so situated that sugar, sirup, and molasses stored therein shall not be subjected to extremes of temperature or humidity.

§ 151.31 Review of tests of sugar, sirup, and molasses.

(a) *Notification to importer.* When the test of the sugar has been determined by the Customs laboratory for an importation of sugar, sirup, or molasses, the district director shall immediately send the importer a copy of the Laboratory Report, Customs Form 6415, showing the average test of the importation and the quantity and test of each lot from which such average test is obtained.

(b) *Review of test of raw sugar.* If the importer, within 2 days, exclusive of Saturdays, Sundays, and holidays, after notification of a test on raw sugar has been sent to him, claims an error in the test so reported, he may request a review of the average test, submitting such evidence that may be in his possession to support his claim. Settlement tests of the sugar in question together with any other information required by the district director shall be furnished by the importer. The district director shall arrive at a final determination based upon a review of the information available. In no instance shall a request for review be granted when the difference between the Customs average test and the settlement test of raw sugar is less than 0.4° S.

(c) *Review and retest of sirup or molasses.* If the importer claims an error in the test of sirup or molasses, the review procedures set forth in paragraph (b) of this section shall be followed. If the information in the district director's possession indicates a strong probability of an error, and the difference between the Customs test and the settlement test is not less than 2 percent total sugars, a retest shall be granted. The district director shall arrive at a final determination based upon a review of the information submitted and the retest.

Subpart C—Petroleum and Petroleum Products

§ 151.41 Information on entry summary.

On the entry summary for petroleum or petroleum product in bulk, the importer shall show the API gravity at 608D° Fahrenheit, in accordance with the current edition of the ASTM–IP Petroleum Measurement Tables (American Edition), approved by the American Society for Testing and Materials. The appropriate unabridged Table shall be used in the reduction of volume to 60° F. If the exact volumetric quantity cannot be determined in advance, the entry summary may be made for "_____ barrels, more or less", but in no case may the estimate vary by more than three percent

from the gross quantity unladen. The term "barrels" is defined in Chapter 27, Additional U.S. Note 7, Harmonized Tariff Schedule of the United States. The information required by this section also shall be shown on the entry summary permit if the entry summary is filed at the time of entry, and on each entry summary continuation sheet regardless of when the entry summary is filed. **[TDs 74–89, 89–1.]**

§ 151.42 Controls on unlading and gauging.

(a) *Methods of control.*

(1) Each district director shall establish controls and checks on the unlading and measurement of petroleum and petroleum products imported in bulk by vessel, truck, railroad car, pipeline, or other carrier. One of the following methods of control shall be employed:

(i) Customs-approved metering and sampling installations provided by the importer;

(ii) Shore tank gauging; or

(iii) Weighing for trucks and railroad cars. **[TD 87–39.]**

(2) Vessel ullages shall be taken in every case unless the district director determines that it is impracticable to do so for safety or technological reasons. Ullages may be taken for trucks and railroad cars if weighing or shore tank gauging is not available as a method of control. Vessel ullages will not be used to determine the quantity unladen unless none of the other methods provided for in this paragraph is available or adequate.

(3) The metering and sampling installations described in paragraph (a)(1)(i) are approved by Customs on a case-by-case basis. Importers seeking approval shall send a complete description of the installation to the district director who, with the concurrence of the Director, Office of Laboratories and Scientific Services, or his designee, shall give approval or shall state, in writing, the reasons for disapproval. Approved installations are subject to periodic verification by Customs. Importers desiring to modify a Customs-approved installation shall obtain Customs approval beforehand. **[TD 87–39.]**

(b) *Duties of Customs officers.* Customs officers may perform or witness ullaging and gauging as follows:

(1) Opening ullages.

(2) Closing ullages of carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages because of special problems.

(3) Shore tank gauges performed by company or related-party employees.

(4) Between 5 and 10 per cent of shore tank gauges conducted by commercial gaugers

(5) Shore tank gauges, including those conducted by a commercial gauger if no carrier ullages are taken.

(c) *Manifest discrepancies.* Manifest discrepancies (shortages and overages) shall be reported by or on behalf of the carrier in the manner specified in § 4.12 of this chapter. If a reported discrepancy is not explained to the satisfaction of the district director, the master or other person in charge, or the owner of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy, will be subject to the imposition of the appropriate penalty under § 460, 584, or 592, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584, 1592). **[TD 89–1.]**

§ 151.43 Reserved [TD 87–39.]

§ 151.44 Storage tanks.

(a) *Plans and gauge tables.* When petroleum or petroleum products subject to duty at a specific rate per barrel are imported in bulk in tank vessels and are to be transferred into shore storage tanks, both the plans of each shore tank showing all outlets and inlets and the gauge table for each tank showing its capacity in U.S. barrels per centimeter or tenths of a centimeter of height shall be certified as correct by the proprietor of the tank. One set of these plans and gauge tables so certified shall be kept on file at the plant of the oil company and shall be available at all times to Customs officers. Another certified set of the shore tank plans and gauge tables shall be filed with the district director for use in verifying the Customs officers' reports. The district director may require such additional sets of shore tank plans, including subsidiary pipeline plans, and gauge tables as he may deem necessary. The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum or petroleum products. **[TDs 79–159, 89–1.]**

(b) *Tags required on valves.* The inlet and outlet valves of each tank shall have tags of a permanent type affixed by the proprietor or lessee indicating the use of the valves.

(c) *Verification of gauge tables.* Whenever he has reason to suspect their reliability, the district director may require the measurement and calibrations shown on the gauge tables to be verified by a Customs officer. If no qualified Customs officer is available, the district director may accept an independent certification verifying the measurements and calibrations. The independent verification shall be performed at the expense of the storage tank proprietor.

§ 151.45 Storage tanks bonded as warehouses.

(a) *Application.* Tanks for the storage of imported petroleum or petroleum products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum or petroleum products belonging or consigned to the owner or lessee of the tank. In addition to the documents and bonds required to be filed with the application to bond (see § 19.2 of this chapter), the certified plans and gauge tables required by § 151.44 shall be filed.

(b) *Removal of nonbonded petroleum.* If a bonded tank is not empty at the time the first importation of bonded petroleum or petroleum products is to be stored therein, the amount of nonbonded petroleum or petroleum products in the tank shall be withdrawn by the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. Domestic or duty-paid petroleum or petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(c) *Information on warehouse withdrawal.* Warehouse withdrawals of petroleum or petroleum products from bonded tanks shall show the information specified in § 151.41, as well as the designation of the tank from which the merchandise is to be withdrawn. Such withdrawals may be made for "_____ U.S. gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen. **[TD 87–39.]**

§ 151.46 Allowance for excessive water and sediment.

Application for an allowance in duties for all detectable water and sediment in imported petroleum and petroleum products shall be made on Customs form 4315. The application shall be filed with the district director within 10 days of the district director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge. If the district director is satisfied that the application for an allowance in duties is acceptable, he shall liquidate the entry accordingly. [TD 89–1.]

§ 151.47 Optional entry of net quantity of petroleum or petroleum products.

Instead of stating the gross quantity of petroleum or petroleum products on the entry summary, the importer may state the net quantity. The analytical report from the Customs-accredited commercial laboratory shall be filed with the entry summary. [TDs 87–39, 89–1.]

Subpart D—Metal-Bearing Ores and Other Metal-Bearing Materials

§ 151.51 Sampling requirements.

(a) *General.* Except as provided in paragraph (b) of this section, when metal-bearing ores and other metal-bearing materials which are classifiable under Chapter 26, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), are entered for consumption or warehousing at the port of first arrival, they shall be sampled for assay and moisture purposes in accordance with § 151.52. If proper facilities for weighing or sampling are not available at the port of entry, the merchandise shall be transported under bond to the place of sampling. The sampling or weighing of metal-bearing ores or materials at any place other than the port of entry shall be at the expense of the parties in interest.

(b) *Ores of low metal content.* When, on the basis of invoice information, the nature of any available sample, knowledge of prior importations of similar materials, and other data, the district director is satisfied that metal-bearing ores entered under heading 2617, HTSUS, as containing less than 1 percent of metals dutiable under headings 2603, 2607, and 2608, HTSUS, are properly entered, he may liquidate the entry on the basis of the assay information contained in the entry papers. However, the sampling and testing procedures prescribed in §§ 151.52 and 151.54 shall be followed at random intervals for verification purposes. [TD 89–1.]

§ 151.52 Sampling procedures.

(a) *Commercial samples taken under Customs supervision.* Representative commercial moisture and assay samples shall be taken under Customs supervision for testing by the Customs laboratory. The samples used for the moisture test shall be representative of shipment at the time the shipment is weighed for Customs purposes. When a shipment is made up of a number of lots a composite sample of the shipment shall be drawn for assay, providing composite sampling is feasible and assays of the individual lots are not required for tariff classification or other Customs purposes. The composite sample shall consist of proportional parts by weight of the prepared sample drawn from the various lots represented and shall be thoroughly mixed.

(b) *Commercial samples furnished by importer.* When commercial samples cannot be taken under Customs supervision, the importer shall be required to furnish a verified commercial moisture sample and prepared assay sample certified to be representative of the shipment at the time the shipment was weighed for Customs purposes. The samples shall be in appropriate containers, properly labeled, and shall be accompanied by a statement including:

(1) Entry number,
(2) Lots represented,
(3) Kind of ore or material,
(4) Date and place where sampling occurred, and
(5) The name and address of the sampling concern.

(c) *Samples taken by Customs.* Where no commercial samples have been taken, the district director shall take representative samples from different parts of the shipment.

§ 151.53 Sample lockers.

A suitable place or containers shall be provided for the safekeeping of all Customs samples under Customs lock or seal.

§ 151.54 Testing by Customs laboratory.

Samples taken in accordance with § 151.52 shall be promptly forwarded to the appropriate Customs laboratory for testing in accordance with commercial methods. The district director may secure from the importer a certified copy of the commercial settlement tests for moisture and for assay which shall be transmitted with the commercial samples to the Custom laboratory. If the Customs tests are not in substantial agreement with the settlement tests, the Customs laboratory director shall review his tests. The Customs tests shall be used in determining the final duties on the merchandise, except that the settlement tests shall be used if, in the opinion of the Customs laboratory director:

(a) The settlement and Customs tests differ by no more than is to be expected between qualified laboratories, and

(b) The use of the settlement test results will not require a different tariff classification or rate of duty than is indicated by the Customs test.

§ 151.55 Deductions for loss during processing.

Deductions for the loss of copper, lead, or zinc content during processing, as authorized by Chapter 26, Additional U.S. Note 1, HTSUS (19 U.S.C. 1202), shall be made by the district director in the liquidation of any entry only if the importer has followed the procedures set forth in that headnote. See §§ 19.17–19.25 of this chapter for procedures applicable to bonded smelting and refining warehouses. [TD 89–1.]

Subpart E—Wool and Hair

§ 151.61 Definitions.

The following are general definitions for the purposes of this subpart:

(a) *Clean kg.* "Clean kg" means kilogram of clean yield as defined in paragraph (b) of this section.

(b) *Clean yield.* Except for the purposes of carbonized fibers, "Clean yield" means the absolute clean content (that is, all that portion of the merchandise which consists exclusively of wool or hair free of all vegetable and other foreign material, containing by weight 12 percent of moisture and 1.5 percent of material removable from the wool or hair by

extraction with alcohol, and having an ash content of not over 0.5 percent by weight), less an allowance, equal by weight to 0.5 percent of the absolute clean content plus 60 percent of the vegetable matter present, but not exceeding 15 percent by weight of the absolute clean content, for wool or hair that would ordinarily be lost during commercial cleaning operations.

(c) for the purposes of carbonized fibers, the term "clean yield" means the condition as entered.

(d) *Sampling unit.* "Sampling unit" means all the similar packages covered by one entry or withdrawal containing wool or hair of the same kind or same general condition and character, produced in the same country, packed in substantially the same manner, and entered as or found to be subject to the same rate of entry.

(e) *General sample.* "General sample" means the composite of the individual portions of wool or hair drawn from a sampling unit. [TD 89–1.]

§ 151.62 Information on invoices.

Invoices of wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS (19 U.S.C. 1202), shall show the following detailed information in addition to other information required:

(a) Condition, that is, whether in the grease, washed, pulled, on the skin, scoured, carbonized, burr-picked, willowed, handshaken, or beaten;

(b) Whether free of vegetable matter, practically free, slightly burry, medium burry, heavy burry;

(c) Whether in the fleece, skirted, matchings, or sorted;

(d) Length, that is, whether super combing, ordinary combing, clothing, or filling;

(e) Country of origin, and, if possible, the province, section, or locality of production;

(f) If wool, the type symbol by which it is bought and sold in the country of origin and the grade of each lot covered by the invoice, specifying the standard or basis used, that is, whether U.S. Official Standards or the commercial terms to designate grade in the country of shipment; and

(g) Net weight of each lot of wool or hair covered by the invoice in the condition in which it is shipped, and the shipper's estimate of the clean yield of each lot by weight or by percentage. (Sec. 481, 46 Stat. 719; 19 U.S.C. 1481.) [TD 89–1.]

§ 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in kilograms, and the estimated percentage clean yield. (Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484.) [TDs 79–221, 89–1.]

§ 151.64 Additional documents.

(a) *Notice of percentage clean yield and grade of wool or hair.* Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, containing the name and address of the importer, shall be filed in duplicate with each entry summary covering wool or hair. [TDs 75–121, 79–221.]

(b) *Extra copy of entry summary.* One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required. [TDs 79–221, 89–1.]

§ 151.65 Duties.

Duties on wool or hair subject to duty at a rate per clean kilogram may be estimated at the time of filing the entry summary on the basis of the clean yield shown on the entry summary if the district director is satisfied that the revenue will be properly protected. Liquidated duties shall be based upon the district director's final determination of clean yield. Estimated and liquidated duties on wool or hair tested for clean yield pursuant to the provisions of § 151.71, and withdrawn for consumption without a change in condition which affects the duties and in a quantity less than an entire sampling unit shall be determined on the basis of an appropriate adjustment of the estimated percentage clean yield shown on the entry summary for the wool or hair included in each of the lots covered by the withdrawal. This adjustment shall be made by increasing or decreasing such estimated percentage clean yield of each lot by the difference between the percentage clean yield of the related sampling unit, as determined by the district director, and the weighted average percentage clean yield for the sampling unit, as computed from the estimated percentages clean yield and net weights shown on the entry summary for the lots included in the sampling unit. [TDs 79–221, 89–1.]

§ 151.66 Duty on samples.

Duty shall be assessed and collected on samples taken pursuant to any provision in this subpart, whether taken by the importer or by Customs, unless and exemption or remission is obtained by compliance with an applicable provision of the law or regulations. The duty shall be assessed upon the samples in accordance with their condition at the time of importation, except in the case of merchandise manipulated in warehouse pursuant to § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). The collection of duty on the samples may be postponed when the importation concerned is not entered for consumption until the withdrawal of the merchandise from which the samples are taken, or until an application for the destruction or abandonment of such merchandise has been accepted pursuant to an appropriate provision of the law or regulations.

§ 151.67 Sampling by importer.

The importer may be permitted after entry to draw samples under Customs supervision in reasonable quantities from the packages of wool or hair designated for examination, provided the bales or bags are properly repacked and repaired by him. Any samples so withdrawn shall be weighed and a record showing the quantities thereof shall be made and filed with the related entry.

§ 151.68 Merchandise to be sampled and tested by Customs.

The following shall be weighed, sampled, and tested for clean yield, unless such sampling or testing is not feasible:

(a) All importation of wool or hair subject to duty at a rate per clean kilogram, except importations entered directly for manipulation under the provisions of § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), or for manufacture under the provisions of § 311, Tariff Act of 1930, as amended (19 U.S.C. 1311);

(b) All imported wool or hair manipulated under the provisions of § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and dutiable after manipulation as wool or hair at a rate per clean kilogram; and

(c) Such other imported wool or hair as the district director may designate. [TD 88–79.]

§ 151.69 Transfer or exportation of part of sampling unit.

(a) *Transfer of right to withdraw.* When an original sampling unit has been weighed, sampled, and tested in accordance with this subpart and a part of such unit is covered by a transfer of the right to withdraw made pursuant to § 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), the percentages clean yield of the part covered by the transfer and of the part not so covered shall be computed on the basis of the original Customs weights and test and the invoice data related to the respective parts.

(b) *Exportation.* When part of such an original sampling unit is exported from continuous Customs custody without having been manipulated as provided for in § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), the percentage clean yield of the part not exported shall be determined, at the discretion of the district director, either on the basis of a new determination by reweighing, resampling, and retesting, or by a computation as described in paragraph (a) of this section, for either the exported or the remaining part.

§ 151.70 Method of sampling by Customs.

A general sample shall be taken from each sampling unit, unless it is not feasible to obtain a representative general sample of the wool or hair in a sampling unit or to test such a sample in accordance with the provisions of § 151.71, in which case the clean yield of the wool or hair in such sampling unit shall be estimated as provided for in § 151.72. At the request of the importer, two general samples may be taken from a sampling unit if the taking and testing of a second general sample is feasible. If two general samples are taken, one general sample shall be held for use in making a second test for clean yield if such a test is requested in accordance with the provisions of § 151.71(c), or if a second test is found desirable by the district director or the chief chemist.

§ 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test or a statement of the reason for not testing a general sample shall be forwarded to the district director. If the report is not received by the district director within 1 month after the date of entry, the clean yield shall be estimated in accordance with § 151.72 except that in the case of wool or hair received under an entry for immediate transportation, the estimate of clean yield shall be made if the laboratory report is not received by the district director within 1 month from the date on which the last of the merchandise is received. However, the district director may withhold his finding of clean yield until the laboratory report is received and predicate his finding on that report if so requested in writing by the importer. An estimate of clean yield shall be made pursuant to the provisions of this paragraph only when an adequate quantity of the wool or hair is available for examination.

(b) *Notification to importer.* The district director shall promptly notify the importer by mail on Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, of the percentage clean yield found by him. Where samples of wool or hair have been tested in a Customs Laboratory and the district director has received a copy of the Laboratory Report, Customs Form 6415, a copy of that report shall accompany the notification to the importer. [TD 75–121.]

(c) *Importer's request for retest.* If the importer is dissatisfied with the district director's finding of clean yield, he may file with the district director a written request in duplicate for another laboratory test for percentage clean yield. Such request shall be filed within 14 calendar days after the date of mailing of the notice of the district director's finding of clean yield. The request shall be granted if it appears to the district director to be made in good faith and if a second general sample as provided for in § 151.70 is available for testing, or if all packages or, in the opinion of the Commissioner of Customs, an adequate number of the packages represented by the general sample are available and in their original imported condition.

(d) *Retest procedures.* The second test shall be made upon the second general sample, if such a sample is available. If the second general sample is not available, the packages shall be reweighed, resampled, and tested in accordance with the provisions of this section. All costs and expenses of such operations, exclusive of the compensation of Customs officers, shall be borne by the importer, who may be present during such resampling and testing.

(e) *Request for commercial test.* If the importer is dissatisfied with the results of the second laboratory test, or if a second laboratory test is not feasible, the wool or hair may be retested by a commercial laboratory in accordance with § 151.73.

§ 151.72 Estimation of clean yield by nonlaboratory method.

(a) *Estimation by Customs.* Shipments of wool or hair specified in § 151.68 which have not been tested by the Customs laboratory under the provisions of § 151.71 shall be examined by the appropriate Customs officer, who shall estimate and report the percentage clean yield of each lot.

(b) *Notification to importer.* The district director shall promptly notify the importer by mail on Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, of the percentage clean yield estimated by the appropriate Customs officer. [TD 75–121.]

(c) *Importer's request for reestimation.* If the importer is dissatisfied with the estimation of clean yield, he may file with the district director a written request in duplicate for a new examination of the wool or hair and a reestimation of its percentage clean yield. Such request shall be granted if it appears to the district director to be made in good faith. The importer shall be given an opportunity to inspect those packages which are in dispute.

(d) *Request for commercial test.* If the importer is dissatisfied with the reestimation of clean yield, he may request a test by a commercial laboratory in accordance with § 151.73.

§ 151.73 Importer's request for commercial laboratory test.

(a) *Conditions for commercial test.* If the importer is dissatisfied with the results of a retest made in accordance with § 151.71(c), or a reestimation of clean yield made in accordance with § 151.72(c), he may request that a commercial test be made to determine the percentage clean yield of the wool or hair.

(b) *Time for filing request.* The importer's request shall be filed in writing with the district director within 14 calendar days after the date of mailing of the notice of the district director's findings based on the retest or reexamination.

(c) *Procedures for commercial test.* The district director shall cause a representative quantity of the wool or hair in dispute to be selected and tested by a commercial method approved by the Commissioner of Customs. The yield, as determined by such commercial test, shall be suitably adjusted to coincide with the definition of clean yield in § 151.61(b). Such test shall be made under the supervision and direction of the district director at an establishment approved by him, and the expense thereof, including the actual expense of travel and subsistence of Customs officers but not their compensation, shall be paid by the importer.

§ 151.74 Retest at district director's request.

If the district director is not satisfied with the results of any test provided for in § 151.71 or § 151.73, he may, within 14 calendar days after receiving the report of the results of such test, proceed to have another test made upon a suitable sample of the wool or hair at the expense of the Government. When the district director is proceeding to have another test made, he shall, within the 14-day period specified in this paragraph, notify the importer by mail of that fact.

§ 151.75 Final determination of clean yield.

The district director shall base his final determination of clean yield upon a consideration of all the tests and examinations made in connection with the wool or hair concerned.

§ 151.76 Grading of wool.

(a) *Examination for grade.* The district director shall cause wool dutiable at a rate per clean kilogram to be examined for grade. The standards for determining grades of wool shall be those which are established from time to time by the Secretary of Agriculture pursuant to law and which are in effect on the date of importation of the wool, as provided by Chapter 51, Additional U.S. Note 2, HTSUS (19 U.S.C. 1202).

(b) *Notification to importer.* If classification of the wool at the grade or grades determined on the basis of the examination will result in the assessment of duty at a rate higher than the rate provided for wool of the grade stated in the entry, the district director shall promptly notify the importer by mail.

(c) *Importer's request for reexamination.* If the importer is dissatisfied with the district director's findings as to the grade or grades of the wool, he may, within 14 calendar days after the date of mailing of the notice of the district director's findings, file in duplicate a written request for another determination of grade or grades, stating the reason for the request. Notice of the district director's findings on the basis of the reexamination of the wool shall be mailed to the importer. [TD 89–1.]

Subpart F—Cotton

§ 151.81 Definition of staple length.

For the purposes of this subpart, "staple length" means the length of the fibers in a particular quantity of cotton designated in terms expressing the measurement by the millimeter or fraction thereof of a representative portion of the quantity in accordance with the Official Cotton Standards of the U.S. for length of staple, as established by the Secretary of Agriculture. [TD 89–1.]

§ 151.82 Information on invoices.

Invoices of cotton provided for in subheading 5201.00.10, 5201.00.20, 5201.00.50, HTSUS (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under 19.05 millimeters in staple length;

(2) The staple length of this cotton is under 28.58 millimeters. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 28.58 millimeters or more and under 34.93 millimeters;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, and cotton pickings), white in color, and has a staple length of 29.37 millimeters or more and under 44.45 millimeters;

(5) The staple length of this cotton is 34.93 millimeters or more and under 42.86 millimeters; or

(6) The staple length of this cotton is 42.86 millimeters or more.

(b) The name of the country of origin, and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc. (Sec. 481, 46 Stat. 719; 19 U.S.C. 1481.) [TD 89–1.]

§ 151.83 Method of sampling.

For determining the staple length of any lot of cotton for any Customs purposes, samples of the lot shall be taken in accordance with commercial practice.

§ 151.84 Determination of staple length.

The district director shall have one or more samples of each sampled bale of cotton stapled by a qualified Customs officer, or a qualified employee of the Department of Agriculture designated by the Commissioner of Customs for the purpose, and shall promptly mail the importer a notice of the results determined.

§ 151.85 Importer's request for redetermination.

If the importer is dissatisfied with the district director's determination, he may file with the district director, within 14 calendar days after the mailing of the notice, a written request in duplicate for a redetermination of the staple length. Each such request shall include a statement of the claimed staple length for the cotton in question and a clear statement of the basis for the claim. The request shall be

granted if it appears to the district director to be made in good faith. In making the redetermination of staple length, the district director may obtain an opinion of a board of cotton examiners from the U.S. Department of Agriculture, if he deems such action advisable. All expenses occasioned by any redetermination of staple length, exclusive of the compensation of Customs officers, shall be reimbursed to the Government by the importer.

Subpart G—Fruit Juices

§ 151.91 Brix values of unconcentrated natural fruit juices.

The following values have been determined to be the average Brix values of unconcentrated natural fruit juices in the trade and commerce of the U.S., for purposes of the provisions of the additional U.S. Notes to Chapter 20, HTSUS (19 U.S.C. 1202), and will be used in determining the dutiable quantity of imports of concentrated fruit juices, using the procedure set forth in Additional U.S. Note 2, Chapter 20, HTSUS **[TDs 74-41, 84-173, 89-1.]**

Kind of fruit juice	*Average Brix value (degrees)*
Apple	13.3
Apricot	14.3
Bilberry (Whortleberry, Vaccinium Myrtillium)	13.4
Black currant	15.0
Blackberry	10.0
Black raspberry	11.1
Blueberry	14.1
Boysenberry	10.0
Carob	40.0
Cherry	14.3
Crabapple	15.4
Cranberry	10.5
Date	18.5
Dewberry	10.0
Elderberry	11.0
Fig	18.2
Gooseberry	8.3
Grape (Vitis Vinifera)	21.5
Grape (Slipskin varieties)	16.0
Grapefruit	10.2
Guava	7.7
Lemon	8.9
Lime	10.0
Loganberry	10.5
Mango	17.0
Naranjilla	10.5
Orange	11.8
Papaya	10.2
Passion Fruit	15.3
Peach	11.8
Pear	15.4
Pineapple	14.3
Plum	14.3
Pomegranate	18.2
Prune	18.5
Quince	13.3
Raisin	18.5
Raspberry (Red raspberry)	10.5
Red currant	10.5
Soursop (Guanabama, Annono Muricata)	16.0
Strawberry	8.0
Tamarind	55.0
Tangerine	11.5
Youngberry	10.0

Subpart H—Flat Glass [Reserved TD 89-1.]

Subpart I—Cigars, Cigarillos, and Tobacco

§ 151.111 Cigars, cigarillos, and tobacco of Cuban origin.

The tobacco National Import Specialist at the port of New York shall have general supervision of the examination of (a) all cigars or cigarillos which may be made or derived in whole or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin. **[TD 81-189.]**

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

Sec.

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Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624. Subpart B also issued under 19 U.S.C. 1315. Subpart C also issued under 19 U.S.C. 1503. Subpart D also issued under 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73-175, 38 FR 17477, July 2, 1973, and T.D. 81-7, 46 FR 2597, January 12, 1981, unless otherwise noted.

§ 152.0 Scope.

This part contains regulations pertaining to the tariff classification and appraisement of imported merchandise. Other applicable provisions are contained elsewhere in this chapter, such as in Part 10 for articles conditionally free or subject to a reduced rate of duty, and in Part 159 for relief from duties on articles lost, damaged, etc. **[TD 73-175.]**

Subpart A—General Provisions

§ 152.1 Definitions.

The following are general definitions for the purposes of Part 152:

(a) **[Reserved TD 87-89.]**

(b) **[Reserved TD 87-89.]**

(c) *Date of exportation.* "Date of exportation," or the "time of exportation" referred to in § 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), means the actual date the merchandise finally leaves the country of exportation for the U.S. If no positive evidence is at hand as to the actual date of exportation, the district director shall ascertain or estimate the date of exportation by all reasonable ways and means in his power, and in so doing may consider dates on bills of lading, invoices, and other information available to him.

(d) *Fair retail value.* "Fair retail value" or "fair market value" as used in Section XXII, HTSUS and Part 148 of this chapter means the price actually paid or payable for all imported merchandise, or if not purchased, the value as otherwise ascertained under 19 CFR 152.100 et seq. **[TDs 87-89, 89-1.]**

§ 152.2 Notification to importer of increased duties.

If the district director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds $15, he shall promptly notify the importer on Customs Form 28, specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the district director there are compelling reasons that would warrant such action.

§ 152.3 Merchandise found not to correspond with invoice description.

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Subpart B—Classification

§ 152.11 Harmonized Tariff Schedule of the United States.

Merchandise shall be classified in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) as interpreted by administrative and judicial rulings. **[TD 89-1.]**

§ 152.12 Applicable rates of duty.

Rates of duty shall be based on the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

§ 152.13 Commingling of merchandise.

(a) *Notice to importer.* The district director shall give written notice to the importer as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable.* Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of Customs examination or by one or more of the methods specified in General Note 5, HTSUS (19 U.S.C. 1202), or

(2) The conditions specified in General Note 5 (b), (c), or (d), HTSUS (19 U.S.C. 1202), are satisfied.

(c) *Time limit.* To obtain the benefit of General Note 5 (a)(iii), (b), (c), or (d), HTSUS (19 U.S.C. 1202), the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the district director evidence showing performance of the commercial settlement tests specified in General Note 5(a)(iii), HTSUS (19 U.S.C. 1202); or

(2) Perform the segregation under Customs supervision as specified in General Note 5(b), HTSUS (19 U.S.C. 1202); or

(3) File with the district director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under General Note 5 (c) or (d), HTSUS (19 U.S.C. 1202).

(d) *Extension of time limit.* The 30-day limit for filing the evidence specified in General Note 5(a)(iii) or for performing the segregation specified in General Note 5(b), HTSUS may be extended by the district director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application for each extension and gives satisfactory reasons for its allowance. **[TD 89-1.]**

§ 152.16 Judicial changes in classification.

The following procedures apply to changes in classification made by decision of either the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit, except to the extent otherwise provided in a ruling published in the ***Customs Bulletin*** pursuant to § 177.10(a) of this chapter: **[TDs 75-186, 85-90.]**

(a) *Identical merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to all merchandise identical with that passed on by the court which is covered by unliquidated entries, whether for consumption or warehouse.

(b) *Similar merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the ***Customs Bulletin.***

(c) *Higher rate.* If a court decision overruling a protest contains a definite statement that a higher rate than that assessed by the district director was properly chargeable, such higher rate shall be applied to all merchandise, whether identical or similar to that passed on by the court, which is affected by the principles of the court's decision and which is entered or withdrawn for consumption after 30 days from the date of the publication of the court's decision in the ***Customs Bulletin.***

(d) *American manufacturer's petition upheld.* If the court upholds a petition made by an American manufacturer, producer, or wholesaler under the provisions of § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), the principles of the court's decision shall be applicable to all merchandise of that character which is entered or withdrawn for consumption after the date of publication of the court's decision in the ***Customs Bulletin.*** The liquidation of entries covering merchandise of that character made after publication of the court's decision shall be suspended in accordance with § 159.57 of this chapter pending any rehearing or review, then liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(e) *Other decisions adverse to Government.* Unless the Commissioner of Customs otherwise directs, the principles of any court decision adverse to the Government (except for a decision upholding an American manufacturer's petition as covered in paragraph (d) of this section) shall be applied to unliquidated entries and protested entries which have not been denied in whole or in part and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made. See § 176.31 of this chapter for the treatment of entries which are the subject of a court decision.

§ 152.17 Changes in classification by Congress or by Presidential Proclamation.

When a rate of Customs duty or internal revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President, the new rate shall be applied in accordance with the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

Subpart C—Appraisement

§ 152.20 [Reserved TD 87-89.]

§ 152.21 [Reserved TD 87-89.]

§ 152.22 [Reserved TD 87-89.]

§ 152.23 Merchandise imported from intermediate countries.

Merchandise imported from one country, being the growth, production, or manufacture of another country, shall for value purposes (see §§ 402, Tariff Act of 1930, as amended; 19 U.S.C. 1401a) be treated as an exportation of the country from which it is immediately imported. However, if it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the U.S. at the time of original shipment, it shall be treated as an exportation of the country from which it was originally exported. The term "country" is to be regarded for the purposes of this section as embracing all the possessions of a nation, however

widely separated, which are subject to the same supreme executive and legislative authority and control. [TD 87-89.]

§ 152.24 [Reserved TD 87-89.]

§ 152.25 Conversion of foreign currency.

When foreign currency must be converted for purposes of appraisement, the instructions in subpart C of Part 159 of this chapter shall be followed.

§ 152.26 Furnishing value information to importer.

The district director shall furnish to importers the latest information as to values in his possession, subject to the following conditions:

(a) *Before appraisement.* Value information shall be given before appraisement only in response to a specific oral or written request by the importer, supported by an adequate reason for the request, or where required by Customs purposes, such as in determining proper estimated duties to be deposited or notification of increased duties in accordance with § 152.2.

(b) *Only for merchandise under district director's jurisdiction.* The information shall be given only in regard to merchandise to be appraised by, or under the jurisdiction of, the district director who receives the request, and only with respect to merchandise for which there is presented evidence of a firm commitment or intent to import such merchandise into the U.S.

(c) *Information by importer.* Each request shall be accompanied by the latest information as to the values in question which the importer has or can reasonably obtain.

(d) *Information not binding.* Value information shall be given by the district director only with an understanding and agreement in each case that the information is in no sense an appraisement and is not binding upon the district director's action when he appraises the merchandise.

(e) *No reply required after entry.* The district director shall not be required to reply to a written request for value information after a value for the merchandise has been declared on entry unless he has information indicating a probable appraised value different from such entered value.

Subpart D—§§ 152.31-43 [Reserved TD 87-89.]

Subpart E—Valuation of Merchandise

§ 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96-39), and will have the force and effect of regulations issued under this subpart. [TD 81-7.]

§ 152.101 Basis of appraisement.

(a) *Effective date.* The value for appraisement of merchandise exported to the U.S. on or after July 1, 1980, or, for articles classified under subheading 6401.00.00, HTSUS (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with § 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by § 201, Trade Agreements Act of 1979.

(b) *Methods.* Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in § 152.103;

(2) The transaction value of identical merchandise provided for in § 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in § 152.103(j);

(3) The transaction value of similar merchandise provided for in §152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in § 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in §152.106, if the deductive value cannot be determined; or

(6) The value provided for in § 152.107, if the computed value cannot be determined.

(c) *Importer's option.* The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see § 141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in § 152.107.

(d) *Explanation to importer.* Upon receipt of a written request from the importer within 90 days after liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in Parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see Part 103 of this chapter). [TDs 81-7, 89-1.]

§ 152.102 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist.* (1) "Assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the U.S. of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the U.S. and are necessary for the production of the imported merchandise.

(2) No service or work to which subparagraph (1)(iv) of this paragraph applies will be treated as an assist if the service or work—

(i) Is performed by an individual domiciled within the U.S.;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the U.S.

(3) The following apply in determining the value of assists described in subparagraph (1)(iv) of this paragraph—

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the U.S. and one or more foreign countries, the value of the assist is the value added outside the U.S.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.* "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles.* (1) "Generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.* "Identical merchandise" means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as "identical merchandise". "Identical merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the U.S. of the merchandise, and is not an assist because undertaken within the U.S.

(e) *Packing costs.* "Packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the U.S.

(f) *Price actually paid or payable.* "Price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the U.S.) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.* "Related persons" means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.* "Merchandise of the same class or kind" means merchandise (including but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.* "Similar merchandise" means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103(j)(2)(i)(A)), regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as "similar merchandise". "Similar merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the U.S. of the merchandise, and is not an assist because undertaken within the U.S.

(j) *Sufficient information.* "Sufficient information" means information that establishes the accuracy of:

(1) Any amount—

(i) added under § 152.103(b) to the price actually paid or payable;

(ii) deducted under § 152.105(d) as profit or general expenses or value from further processing, or

(iii) added under § 152.106(b) as profit or general expenses; or

(2) Any difference taken into account under § 152.103(j)(2)(iv); or

(3) Any adjustment made under § 152.104(d).

(k) *Unit price in greatest aggregate quantity.* "Unit price at which merchandise is sold in the greatest aggregate quantity" means the unit price at which the "merchandise concerned" is sold to unrelated persons at the first commercial level after importation (in cases to which § 152.105(c)(1) and (2) apply), or after further processing (in cases to which § 151.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price. **[T.D. 81-7.]**

§ 152.103 Transaction value.

(a) *Price actually paid or payable*—(1) *General.* In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

Example 1. In a transaction with foreign Company X, a U.S. firm pays Company X $10,000 for a shipment of meat products, packed ready for shipment to the U.S. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

Example 2. A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of $100 per unit based on the price actually paid or payable.

Example 3. A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

Example 4. Company X in the U.S. pay $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys: however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

Example 5. A seller offers merchandise at $100, less a 2% discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.

The transaction value is $98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in § 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50¢ per unit for the assembly. The transaction value for the assembled unit is $1.50.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a *pro rata* share of the tooling assist valued at $1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under § 152.103(b).

(5) *Foreign inland freight and other inland charges incident to the international shipment of merchandise.*

(i) *Ex-factory sales.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

(ii) *Sales other than ex-factory.* As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the U.S. may be considered incident to the international shipment of that merchandise within the meaning of § 152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the U.S. and placed with a carrier through shipment to the U.S.

(iii) *Evidence of sale for export and placement for through shipment.* A sale for export and placement for through shipment to the U.S. under subsection (ii) of this section shall be established by means of a through bill of lading to be presented to the district director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (*e.g.,* shipments via the seller's own

conveyance) will other documentation satisfactory to the district director showing a sale for export to the U.S. and placement for through shipment to the U.S. be accepted in lieu of a through bill of lading.

(iv) *Erroneous and false information.* This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated. **[TD 84-235.]**

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the U.S., plus amounts equal to—

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the U.S.; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1)(i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the U.S. of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(c) *Sufficiency of information.* Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) *Assist.* If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consists of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1. A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

Example 2. A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

(e) *Apportionment.* (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the U.S., the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the U.S., or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) *Interpretative note.* An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) *Royalties or license fees.* Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license

fees paid to third parties for use, in the U.S., of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the U.S., and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the U.S.

Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

(g) *Proceeds of subsequent resale.* Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the U.S., the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the U.S. Assuming the resale price in the U.S. can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.* Charges for the right to reproduce the imported merchandise in the U.S. will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species.

Example. The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the U.S.; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the U.S. ordinarily are liable.

Example. A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance for, the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value.*—(1) *In general.* The transaction value of imported merchandise will be the appraised value only if—

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates—

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the U.S.; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i)(A) and (B) of this section that is used for comparison relates to merchandise that was exported to the U.S. at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to—

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller.*—(1) *Validation of transaction.* The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value using the procedures contained in § 152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value "closely approximates" any one of the test values provided in § 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement.

This procedure will not affect or replace the administrative ruling procedures contained in Part 177 of this chapter, or any other Customs procedures. [TD 81-7.]

§ 152.104 Transaction value of identical merchandise and similar merchandise.

(a) *General.* The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the U.S. at or about the time that the merchandise being appraised is exported to the U.S.

(b) *Identical merchandise.* Minor differences in appearance will not preclude otherwise conforming merchandise from being considered "identical". See § 152.102(d).

(c) *Similar merchandise.* The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is "similar". See § 152.102(i).

(d) *Commercial level and quantity.* Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on "sufficient information". See § 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.* (1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increse or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note.* If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate. [TD 81-7.]

§ 152.105 Deductive value.

(a) *Merchandise concerned.* For the purposes of deductive value, "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind.* For the purposes of deductive value, "merchandise of the same class or kind" includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.* The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon when and in what condition the merchandise concerned is sold in the U.S.:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 80th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to—

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the U.S. of imported merchandise that is of the same class or kind, regardless of the country of exportation as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the U.S.;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the U.S., if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the U.S. ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general

expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the U.S. of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the U.S. of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	$100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

(2) *Interpretative note 2.* Two sales to unrelated persons occur; in the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

(3) *Interpretative note 3.* Various quantities are sold to unrelated persons at various prices:

(i) *Sales*

Sale quantity	Unit price
40 units	$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(ii) *Totals*

Total quantity sold	Unit price
65	$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing.*—(1) *Quantified data.* If merchandise has undergone further processing after its importation into the U.S. and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.* If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the U.S., the use of paragraph (c)(3) of this section will be unjustified. The district director shall review each case involving these issues on its merits.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing. **[TDs 81–7, 85–123.]**

§ 152.106 Computed value.

(a) *Elements.* The computed value of imported merchandise is the sum of—

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the U.S.;

(3) Any assist, if its value is not included under paragraph (a)(1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the U.S. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from "sufficient information". See §152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the U.S., and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the U.S. and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the U.S., the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the U.S. will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the U.S. of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if—

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data if not contrary to domestic law regarding disclosure of information. See also §152.101(d).

§ 152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in §§ 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the U.S. will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The "90 days" requirement for the sale of merchandise referred to in §152.105(c) may be administered flexibly. **[TD 81-7.]**

§ 152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of—

(a) The selling price in the U.S. of merchandise produced in the U.S.;

(b) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(c) The price of merchandise in the domestic market of the country of exportation;

(d) A cost of production, other than a value determined under §152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(e) The price of merchandise for export to a country other than the U.S.;

(f) Minimum values for appraisement;

(g) Arbitrary or fictitious values.

[R.S. 251, 46 Stat. 759, Title II, Pub. L. 96-39, 93 Stat. 194 (19 U.S.C. 66, 402, 1624)] **[TDs 81-7, 85-123.]**

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Sec.

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Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart C also issued under sec. 563, 46 Stat. 746, as amended; 19 U.S.C. 1563, unless otherwise noted.

Source: T.D. 72-258, 37 FR 20171, Sept. 27, 1972, unless otherwise noted.

§ 158.0 Scope.

This part sets forth general rules for granting relief from duties on merchandise which is lost, damaged, abandoned, or exported. [TD 72-258.]

Subpart A—Lost or Missing Packages and Deficiencies in Contents of Packages

§ 158.1 Definition of "permitted" merchandise.

For the purpose of this subpart, merchandise is "permitted" when Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

(a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,

(b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the district director, no later than the close of business on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for delivery has been made, with the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

§ 158.2 Shortage in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and manifested number of packages in a shipment "permitted" and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages. [TDs 73-175, 79-221, 85-159.]

§ 158.3 Allowance for lost or missing packages included in an entry summary.

Allowance shall be made in the assessment of duties for lost or missing packages of merchandise included in an entry summary whenever it is established to the satisfaction of the district director before the liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not "permitted." A claim for such allowance shall be made on Customs Form 5931, in triplicate, executed by the importer and the importing carrier or bonded carrier, as appropriate. When the importing or bonded carrier refuses to execute the Customs Form 5931, a claim may be allowed if the importer properly executes the Customs Form 5931 and attaches copies of the dock receipt or other document evidencing nonreceipt of the lost or missing packages.

§ 158.4 Liability of carrier for lost or missing packages.

Upon a joint determination or independent determination of quantity as set forth in § 158.1 (a) or (b) resulting in the merchandise being "permitted," the carrier shall be responsible only for any discrepancy between the manifested quantity and the "permitted" quantity. In the case of an importing carrier, when there is a difference between the quantity shown on the inward foreign manifest and the

quantity "permitted," liquidated damages or duties shall be assessed under the provisions of the carrier's bond or under the provisions of § 448, Tariff Act of 1930, as amended (19 U.S.C. 1448), unless the carrier corrects his manifest (see § 4.12 of this chapter). In the case of a bonded carrier, liquidated damages for lost or missing merchandise shall be assessed in accordance with § 18.8 of this chapter.

§ 158.5 Deficiencies in contents of packages—general.

An allowance shall be made in the assessment of duties for deficiencies in the contents of packages when, before the liquidation of the entry becomes final, the importer files:

(a) In the case of a concealed shortage, a Customs Form 5931, in triplicate, executed by the importer alone, and the district director satisfies himself as to the validity of the claim; or,

(b) In the case of an unconcealed shortage, a Customs Form 5931, in triplicate, executed by both the importer and the importing or bonded carrier, as appropriate.

§ 158.6 Deficiencies in contents of examination packages.

Allowance for deficiency in the contents of any examination package reported to the district director by a Customs officer shall be made in the liquidation of the entry. No Customs officer except one making an examination contemplated by § 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), shall report a supposed deficiency to the district director unless it is established to the satisfaction of the reporting officer that the merchandise was not imported. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation. **[TD 78-448.]**

Subpart B—Damaged or Defective Merchandise

§ 158.11 Merchandise completely worthless at time of importation.

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the district director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the district director on Customs Form 4315 in duplicate, within 96 hours after the unlading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under § 142.2(b)(2) of this chapter) pursuant to the entry permit. **[TD 76-220.]**

(2) Should an application filed in accordance with subparagraph (1) of this paragraph be withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is found by the district director to be entirely without commercial value by reason of damage or deterioration. (Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.12 Merchandise partially damaged at time of importation.

(a) *Allowance in value.* Merchandise which is subject to ad valorem or compound duties and found by the district director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an allowance made in the value to the extent of the damage. However, no allowance shall be made when forbidden by law or regulation; for example, Chapter 72, Additional U.S. Note 3, HTSUS (19 U.S.C. 1202), provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloration or rust occurring before importation shall be made upon iron or steel or upon any article of iron or steel.

(b) *No allowance in specific duties.* In the case of merchandise subject to specific or compound duties and found to be partially damaged at the time of importation, no allowance may be made in the specific duties or in the weight, quantity, or measure (except that an allowance for any excessive moisture or other impurities may be made in accordance with § 158.13). However, any part of the shipment which is totally worthless and can be segregated from the rest of the shipment may be treated as a nonimportation in accordance with § 158.11. (Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506) **[TD 89-1.]**

§ 158.13 Excessive moisture and other impurities.

(a) *Application by importer.* An application for an allowance in duties under § 507, Tariff Act of 1930 (19 U.S.C. 1507), for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315. The application shall be filed with the district director within 10 days after the report of weight or gauge has been received by the district director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by district director.* If the district director is satisfied after any necessary investigation that the merchandise contains excessive moisture or other impurities not usually found in or upon such or similar merchandise, he shall make allowance for the amount thereof in the liquidation of the entry. (19 U.S.C. 1507) **[TD 89-1.]**

§ 158.14 Perishable merchandise condemned.

(a) *Application by importer.* When fruit or other perishable merchandise has been condemned by health officers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under § 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file

with the district director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties.* If the district director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense. (Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

Subpart C—Casualty, Loss, or Theft While in Customs Custody

§ 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

§ 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

§ 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under Subpart A or Subpart B of this part, or § 18.6 of this chapter.

§ 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, and within 90 days from the date of discovery shall file any evidence required by § 158.26 or § 158.27.

§ 158.24 Place of filing.

The application and evidence shall be filed with the district director at the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the district director at the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the district director at the port of destination, except that if the merchandise is returned to the port at which the transportation entry was made, the application shall be filed at that port.

§ 158.25 Partial destruction or injury.

In the case of partial destruction or injury, no application shall be entertained unless the district director shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

§ 158.26 Loss or theft in public stores.

In the case of alleged loss or theft while the merchandise is in the public stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. If the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from Customs custody, the following evidence shall be submitted:

(a) A declaration of each cartman, lighterman, or other carrier handling the package between the public stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was an abstraction of the merchandise while the package was in his possession.

(b) A declaration of the person who first received the package for the importer, owner, or ultimate consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(c) A declaration of the person who opened the package after release from Customs custody that the alleged missing merchandise was not found by him in the package or elsewhere.

§ 158.27 Accidental fire or other casualty.

In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted:

(a) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a Customs officer) having charge of the merchandise at the time of casualty, stating:

(1) The time, place, and nature of such casualty;

(2) That the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and

(3) That it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(b) The bill of lading, the entry, the entry summary (where appropriate), and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the district director at the port where the claim is filed.

(c) A copy of the insurance appraiser's report, if any.

best copy available

§ 158.28 Waiver of evidence.

The district director may waive the production of any of the evidence required by this subpart if the validity of the claim is otherwise established to his satisfaction.

§ 158.29 Decision by district director.

When the application and evidence have been received and examined by the district director, he shall determine whether the desired abatement or refund of duty shall be made and notify the importer of his decision.

§ 158.30 Review of district director's decision.

(a) *Filing of petition.* The importer may file with the district director a petition addressed to the Commissioner of Customs for a review of the district director's decision. Such petition shall be filed in duplicate within 30 days from the date of the notice of the district director's decision, shall completely identify the case, and shall set forth in detail the objections to the district director's decision.

(b) *Decision by Commissioner.* When the petition has been filed, the district director shall promptly transmit both copies thereof and the entire file to the Commissioner, together with a full statement of his views. When the Commissioner's decision is received, the district director shall proceed in conformity therewith.

Subpart D—Destroyed, Abandoned, or Exported Merchandise

§ 158.41 Destruction of prohibited merchandise.

Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the U.S. by any Government agency after its release from Customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal for consumption, may be destroyed under Government supervision. In such case, the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded. In lieu of destruction, the merchandise may be exported under Customs supervision in accordance with § 158.45(c). (Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

§ 158.42 Abandonment by importer within 30 days after entry.

Allowance in duties for merchandise abandoned to the Government in accordance with § 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), shall be subject to the following conditions:

(a) *Minimum quantity to be abandoned.* The merchandise being abandoned shall represent 5 percent or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the merchandise being abandoned appears.

(b) *Application within 30 days.* The importer shall file written notice of abandonment with the district director at the port where the entry was filed within 30 days after the date of entry, or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(c) *Delivery of merchandise.* Within the 30-day period set forth in paragraph (b) of this section, the importer shall deliver the abandoned merchandise to such place as the district director specifies, unless the district director is satisfied that the merchandise is so far destroyed as to be nondeliverable.

(d) *Identification of merchandise.* The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the district director, who shall make such examination as may be necessary to verify such identification.

(e) *Segregation and repacking.* When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the importer and under Customs supervision. (Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.43 Abandonment or destruction of merchandise in bond.

Allowance in duties for merchandise entered under bond destroyed under § 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or for merchandise in bonded warehouse abandoned to the Government under § 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), shall be subject to the following conditions:

(a) *Application by importer.* The importer shall file an application for abandonment or destruction of merchandise in bond with the district director on Customs From 3499, with the title modified to read "Application and Permit to Abandon (or Destroy) Goods in Bond." When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the district director.

(b) *Concurrence of warehouse proprietor.* An application to abandon or destroy warehoused merchandise shall not be approved unless concurred in by the warehouse proprietor.

(c) *Abandonment.* (1) *Costs.* When in the opinion of the district director the abandonment of merchandise under § 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), will involve any expense or cost to the Government, or if the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, such abandonment shall not be permitted unless the importer deposits a sum which in the opinion of the district director will be sufficient to save the Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the importer. However, the applicant may elect to destroy such merchandise under Customs supervision pursuant to the provisions of § 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)).

(2) *Time period.*—The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation. **[TD 79–221.]**

(d) *Destruction.* (1) *Costs.* Destruction of merchandise under § 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), shall be at the expense of the importer.

(2) *Time period.*—The importer may request destruction of his warehoused merchandise within 5 years from the date of importation. **[TD 79–221.]**

(e) *Action by district director.* When the conditions set forth in paragraphs (a) through (d) of this section are met, the district director may grant applications and make an

allowance in duties for the merchandise abandoned or destroyed. In any case where doubt exists, the matter shall be referred to the Commissioner of Customs. (Secs. 557, 563, 46 Stat. 744, as amended, 746, as amended; 19 U.S.C. 1557, 1563)

§ 158.44 Disposition of abandoned merchandise.

(a) *General conditions.* The disposition of merchandise abandoned to the Government pursuant to § 158.42 or § 158.43, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the U.S. Custom Service.

(b) *Sale of merchandise.* If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 127 of this chapter, unless it is worthless or it appears probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer. **[TD 77-12.]**

(c) *Disposition of worthless merchandise.* If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the district director shall specify. The district director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application. (Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

§ 158.45 Exportation of merchandise.

(a) *From continuous Customs custody.* Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§ 18.25–18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody.* Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see Part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the U.S., it may be exported under Customs supervision in accordance with §§ 18.25–18.27 of this chapter, with refund of any duties that have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with § 158.41.

(d) *Not legally marked merchandise.* When merchandise found to be not legally marked is exported or destroyed under Customs supervision after once having been released from Customs custody, as provided for in § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), such exportation or destruction shall not exempt such merchandise from the payment of duties other than the marking duties. (Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558)

PART 159—LIQUIDATION OF DUTIES

Sec.

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Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

Source: T.D. 73-175, 38 FR 17482, July 2, 1973, unless otherwise noted.

§ 159.0 Scope.

This part sets forth general rules for the liquidation of entries. Certain specific procedures affecting liquidation appear in other parts of this chapter; e.g., Part 158 of this chapter covers allowance for lost or damaged merchandise. **[TD 73-175.]**

Subpart A—General Provisions

§ 159.1 Definition of liquidation.

"Liquidation" means the final computation or ascertainment of the duties or drawback accruing on an entry.

§ 159.2 Liquidation required.

All entries covering imported merchandise, except temporary importation bond entries and those for transportation in bond or for immediate exportation, shall be liquidated.

§ 159.3 Rounding of fractions.

(a) *Value.* In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1, with all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. However, the total dutiable value of the invoice shall not be increased or decreased by more than the rounding of the total dutiable value to an even dollar. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order to avoid such an increase or decrease. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate of duty dependent upon value, fractional parts of a dollar shall be considered.

(b) *Quantities subject to specific duty.* Except in the case of alcoholic beverages treated under § 159.4, if a rate of duty is specific and $1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity with any fractional part expressed in the form of a decimal extended to two places.

§ 159.4 Alcoholic beverages.

(a) *Quantities subject to duties.* Customs duties and internal revenue taxes on distilled spirits provided for in headings 2207 and 2208, HTSUS (19 U.S.C. 1202), and subject to internal revenue taxes shall be collected only on the number of proof gallons and fractional parts thereof, entered or withdrawn for consumption. No internal revenue tax shall be collected on distilled spirits in bulk which have been transferred to Internal Revenue bonded premises in accordance with § 141.102(b) of this chapter. Customs duties and internal revenue taxes on alcoholic beverages other than subheadings 2206.00.30 and 2206.00.90, HTSUS and distilled spirits provided for in headings 2207 and 2208, shall

be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption. [TDs 80–271, 89–1.]

(b) *Computation of duties.* In the computation of Customs duties on alcoholic beverages provided for in headings 2207 and 2208, HTSUS (19 U.S.C. 1202), which are also subject to internal revenue taxes, the methods prescribed for the computation of internal revenue taxes on such beverages shall be followed. The following methods apply to the specific beverages shown:

(1) *Distilled spirits.* The quantity of distilled spirits imported in barrels, kegs, or similar containers shall be ascertained in accordance with the regulations of the Bureau of Alcohol, Tobacco, and Firearms. Where distilled spirits are imported in bottles, jugs, or similar containers, Customs duties and taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried out to three decimal places. [TDs 78–329, 89–1.]

(2) *Wine.* Customs duties and taxes on wines shall be on the basis of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionally on all fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon.

(3) *Beer and similar fermented beverages.* Customs duties and taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with § 5051(a), Internal Revenue Code of 1954 (26 U.S.C. 5051(a)). (Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315)

§ 159.5 Cigars, cigarettes, and cigarette papers and tubes.

The internal revenue taxes imposed on cigars, cigarettes, and cigarette papers and tubes under § 5701 or 7652, Internal Revenue Code of 1954 (26 U.S.C. 5701 or 7652), are determined in accordance with § 5703 of that Code (26 U.S.C. 5703) at the time of removal; that is, on the quantity removed from Customs custody under the entry or withdrawal for consumption. The Customs duties, unlike those on alcoholic beverages, do not necessarily apply only to such quantities. (Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315.)

§ 159.6 Difference between liquidated duties and estimated duties.

(a) *Difference under $10 in original liquidation.* When there is a net difference of less than $10 between the total amount of duties assessed in the liquidation of any entry (other than an informal, mail, or baggage entry) and the total amount of estimated duties deposited, including any supplemental deposit, the difference shall be disregarded and the entry endorsed "as entered." In the case of an informal, mail, or baggage entry, the amount of duties computed by a Customs officer when the entry is prepared by, or filed with, him shall be considered the liquidated assessment. [TD 78–394.]

(b) *Difference under $10 in reliquidation.* When there is a net difference of less than $10 between the total amount of duties found due in the reliquidation of any entry and the total amount of duties assessed in the prior liquidation of the entry, the difference shall be disregarded except in the following cases: [TD 78–394.]

(1) *Reliquidation at importer's request.* When reliquidation of any entry is made at the importer's request, such as reliquidation following the allowance of a protest under § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), or a request for correction under § 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), any refund determined to be due shall be refunded even if less than $10.

(2) *Court decision.* Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order shall be refunded or collected as the case may be.

(c) *Difference of $10 or more collected or refunded.* If there is a difference of $10 or more between the duties assessed in the liquidation of an entry and the total estimated duties deposited, or between the total duties assessed in the reliquidation of an entry and those assessed in the prior liquidation, the entry shall be endorsed to show the difference and bills or refund checks shall be issued. [TD 78–394.]

(d) *Customs duties and taxes netted for $10 limit.* The assessments of Customs duties and internal revenue taxes shall be separately stated on the entry at the time of liquidation, but the amounts of any differences shall be netted when applying the $10 minimum for issuance of a bill or refund check. (Sec. 7, 52 Stat. 1081, as amended, sec. 505, 46 Stat. 732, as amended; 19 U.S.C. 1321, 1505.) [TD 78–394.]

§ 159.7 Rewarehouse entries.

The liquidation of the original warehouse entry shall be followed in determining the liability for duties on a rewarehouse entry, except in the following cases:

(a) *Merchandise excluded from liquidation of original warehouse entry.* When any of the following types of merchandise are withdrawn from warehouse for transportation to another port, they shall be excluded from the liquidation of the original warehouse entry, and the liability for duties shall be determined by a liquidation of the rewarehouse entry made in the district where the merchandise is withdrawn for consumption or for exportation:

(1) Alcoholic beverages provided for in headings 2207 and 2208, HTSUS (19 U.S.C. 1202), and subject to internal revenue taxes;

(2) Cigars, cigarettes, and cigarette papers and tubes subject to internal revenue taxes;

(3) Tariff-rate quota merchandise; and

(4) Wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS (19 U.S.C. 1202).

(b) *Reliquidation required by change in rate.* When a rate of Customs duty or tax is changed by an act of Congress or a proclamation of the President, any necessary reliquidation of Customs duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of the change in rate shall be made in the district in which the merchandise is held in Customs custody on the effective date of the change.

(c) *Shortage, irregular delivery, nondelivery, and other cases.* In cases involving shortage, irregular delivery, or nondelivery under the original warehouse withdrawal for transportation, or in other cases when the district director of

the port where the merchandise is entered for rewarehouse is of the opinion that circumstances make it inadvisable to follow the liquidation of the original warehouse entry, he shall make an appropriate adjustment in the amount of duties to be assessed under the rewarehouse entry. (Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557.) [TD 89-1.]

§ 159.8 Allowance for loss, injury, etc.

Allowance in duties for any merchandise which is lost, stolen, destroyed, injured, abandoned, or short-shipped shall be made in accordance with the provisions of Part 158 of this chapter.

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Bulletin notice of liquidation.* Notice of liquidation of formal entries shall be made on a bulletin notice of liquidation, Customs Form 4333 or 4335:

(1) *Customs Form 4333.* Customs Form 4333 shall be used for the following types of entries:

(i) Dutiable consumption entries;

(ii) Free consumption entries liquidated as dutiable;

(iii) Warehouse entries;

(iv) Drawback entries;

(v) Vessel repair entries;

(vi) Appraisement entries;

(vii) Permanent exhibition entries liquidated as dutiable; and

(viii) Other entries for which a bulletin notice of liquidation is required and for which Customs Form 4335 is not appropriate.

(2) *Customs Form 4335.* Customs Form 4335 shall be used for free consumption entries liquidated "as entered" and permanent exhibition entries liquidated "Free." When free consumption entries in an unbroken series are liquidated free on the same day, the first and last entry numbers may be shown on the bulletin notice, e.g., "576/863," instead of listing every number in the unbroken series.

(b) *Posting of bulletin notice.* The bulletin notice of liquidation shall be posted for the information of importers in a conspicuous place in Customs at the port of entry (or Customs station, when the entries listed were filed at a Customs station outside the limits of a port of entry), or shall be lodged at some other suitable place in Customs in such a manner that it can readily be located and consulted by all interested persons, who shall be directed to that place by a notice maintained in a conspicuous place in Customs stating where notices of liquidation of entries are to be found.

(c) *Date of liquidation*—(1) *Generally.*—The bulletin notice of liquidation shall be dated with the date it is posted or lodged in Customs for the information of importers. The entries for which the bulletin notice of liquidation has been prepared shall be stamped "Liquidated", with the date of liquidation, which shall be the same as the date of the bulletin notice of liquidation. This stamping shall be deemed the legal evidence of liquidation.

(2) *Exception: Entries liquidated by operation of law.*—(i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in § 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, shall be deemed liquidated as of the date of expiration of the appropriate statutory period.

(ii) The bulletin notice of liquidation shall be posted or lodged in Customs within a reasonable period after each liquidation by operation of law and shall be dated as of the date of expiration of the statutory period.

(iii) A protest under § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in Customs. [TD 79-221.]

(d) *Courtesy notice of liquidation.*—Customs will endeavor to provide importers or their agents with Customs Form 4333-A; Courtesy Notice, for entries specified in § 159.9(a)(1), scheduled to be liquidated or deemed liquidated by operation of law. This notice shall serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation. [TD 79-221.]

§ 159.10 Notice of liquidation and date of liquidation for informal, mail, and baggage entries.

(a) *Usual date of liquidation.* Except in the cases provided for in paragraph (b) of this section, the effective date of liquidation for informal, mail, and baggage entries shall be:

(1) The date of payment by the importer of duties due on the entry;

(2) The date of release by Customs or the postmaster when the merchandise is released under such an entry free of duty; and

(3) The date a free entry is accepted for articles released under a special permit for immediate delivery under Part 142 of this chapter.

(b) *Date of liquidation when duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry because the merchandise is subject to a tariff-rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the merchandise to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on the entry shall be voided. When the tariff status of the merchandise either as dutiable or free is finally ascertained it shall be noted on the entry. The effective date of liquidation shall be the date of posting or lodging of the notice of liquidation required by paragraph (c)(3) of this section.

(c) *Notice of liquidation*—(1) *Dutiable entries.* Where duties are paid on an entry in accordance with paragraph (a)(1) of this section, notice of liquidation is furnished by a suitable printed statement appearing on the receipt issued for duties collected. No other notice of liquidation shall be given, but notice of reliquidation of any such entry shall be given on Customs Form 4333 posted or lodged in the place and manner specified in § 159.9(b).

(2) *Free entries.* Notice of liquidation is furnished by release of the merchandise under a free entry in accordance with paragraph (a)(2) of this section, or by acceptance of the free entry in accordance with paragraph (a)(3) of this section after release under a special permit for immediate delivery. No further notice of the liquidation of such entries shall be given.

(3) *Entries where duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry as set forth in paragraph (b) of this section, notice of liquidation shall be given on a bulletin notice of liquidation, Customs Form 4333 or 4335, in the manner specified in § 159.9 for formal entries.

§ 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.*—Except as provided in § 159.12, an entry not liquidated within 1 year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer at the time of filing an entry summary for consumption in proper form, with estimated duties attached, or withdrawal for consumption in proper form, with estimated duties attached. Notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333–A in accordance with § 159.9(d).

(b) *Applicability.*—The provisions of this section and § 159.12 shall apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979, but shall not apply to vessel repair entries or drawback entries. **[TD 79–221.]**

§ 159.12 Extension of time for liquidation.

(a) *Reasons*—(1) *Extension.*—The district director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by Customs.*—Information needed by Customs for the proper appraisement or classification of the merchandise is not available, or

(ii) *Importer's request.*—The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. "Good cause" is demonstrated when the importer satisfies the district director that more time is needed to present to Customs information which will affect the pending action, or there is a similar question under review by Customs.

(2) *Suspension.*—The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension.*—If the district director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333–A, appropriately modified, that the time has been extended and the reasons for doing so.

(c) *Notice of suspension.*—If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the district director promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333–A, appropriately modified, of the suspension.

(d) *Additional extensions*—(1) *Information needed by Customs.*—If an extension has been granted because Customs needs more information and the district director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request.*—If the statutory period has been extended for 1 year at the importer's request, and the importer thereafter determines that additional time is necessary, he may request another extension in writing before the original extension expires, giving reasons for his request. If the district director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, he shall issue a notice extending the time for liquidation for an additional period not to exceed 1 year.

(e) *Limitation on extensions.*—The total time for which extensions may be granted by the district director may not exceed 3 years.

(f) *Time limitation*—(1) *Generally.*—An entry not liquidated within 4 years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer at the time of filing the entry summary for consumption in proper form, with estimated duties attached, or the withdrawal for consumption in proper form, with estimated duties attached, unless liquidation continues to be suspended by statute or court order. Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333–A, in accordance with § 159.9(d), in addition to the bulletin notice specified in § 159.9(c)(2)(ii).

(2) *Suspension of liquidation by statute or court order.*—When liquidation of an entry continues to be suspended beyond the 4-year period specified in paragraph (f)(1) of this section due to a statute or court order, the entry shall be liquidated within 90 days after removal of the suspension.

(g) *Notice of liquidation.*—If an entry is liquidated after an extension expires or a suspension is removed, notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333–A in accordance with § 159.9(d). **[TD 79–221.]**

Subpart B—Weight, Gauge, and Measure

§ 159.21 Quantity upon which duties based.

Insofar as duties are based upon the quantity of any merchandise, such duties shall be based upon the quantity of such merchandise at the time of its importation, except in the following cases:

(a) *Manipulation in warehouse.* If any merchandise covered by a warehouse entry has been cleaned, sorted, repacked, or otherwise changed in condition under § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), withdrawals shall be passed and the entry liquidated on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise.

(b) *Alcoholic beverages.* Duties on certain alcoholic beverages are assessed only on the quantities entered or withdrawn for consumption (see § 159.4).

(c) *Cigars, cigarettes, and cigarette papers and tubes.* Although Customs duties on cigars, cigarettes, and cigarette papers and tubes are assessed on the quantities imported, the internal revenue taxes on such merchandise are assessed only on the quantities entered or withdrawn for consumption (see § 159.5). (Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315.)

§ 159.22 Net weights and tares.

(a) *Determination of net weight.* The net weight of merchandise dutiable by net weight, or upon a value dependent upon net weight, shall be determined insofar as possible by obtaining the actual weight, or by deducting the actual or schedule tare from the gross weight. Actual tare may be

determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) *Invoice net weight or tare.* When the actual net weight or tare cannot reasonably be determined and no schedule tare is applicable, liquidation may be made on the basis of the invoice net weight or tare.

(c) *Schedule tare.* The following tares, which, from experience, have proved to be the average for certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes: 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

Figs in skeleton cases: Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks: Eight percent of the gross weight.

Ocher, in oil, in casks: Twelve percent of the gross weight.

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the net contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	*Drained weight*
3 kilo	13.6 kilograms—case of 6 tins.
794 grams	16.7 kilograms—case of 24 tins.
425 grams	8.0 kilograms—case of 24 tins.
198 grams	3.9 kilograms.—case of 24 tins.
113 grams	2.4 kilograms—case of 24 tins.

Tobacco, leaf not stemmed: 5.9 kilograms per bale.

Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

(d) *Actual tare.* In the following circumstances, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary:

(1) If the importer is not satisfied with the invoice tare or with the schedule tare;

(2) If the district director is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise; or

(3) If the weigher has reason to believe that the invoice or schedule tare is greater than the real tare.

(e) *Estimated tare.* When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(f) *Weight for value purposes.* In determining the total dutiable value of merchandise which is subject to ad valorem duty and appraised on the basis of weight, liquidation shall be made on the same basis as appraisement. For example, if appraisement is made on the basis of gross weight, the unit value shall be multiplied by the total gross weight in computing the total value even though net weight may be used for other purposes in liquidation, such as in determining total specific duties. (Sec. 507, 46 Stat. 732; 19 U.S.C. 1507.) **[TD 89–1.]**

Subpart C—Conversion of Foreign Currency

§ 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

§ 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

§ 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 372(a) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* For the currency of each of the following foreign countries, there will be published in the ***Customs Bulletin,*** for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hongkong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used.* The certified quarterly rate established under paragraph (a) of this section shall be used for Customs purposes for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the ***Customs Bulletin*** and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the ***Customs Bulletin,*** and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

§ 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 372(c)(2) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33

and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered the certified daily rate for the day of exportation.

§ 159.36 Multiple certified rates.

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published in the ***Customs Bulletin.***

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the district director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the district director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the U.S. during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the district director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with § 159.34 or § 159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with § 159.34 or § 159.35, the district director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the U.S. during the period involved, until instructions are received from the Commissioner.

§ 159.37 Suspension of certification of rates.

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or otherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in § 159.36 shall apply.

§ 159.38 Rates for estimated duties.

For purposes of calculating estimated duties, the district director shall use the rate or rates appearing to be applicable under the instructions in this subpart to the merchandise involved. When it is not yet known what certified rate or rates are applicable or no rate has been certified, the district director shall take into account all the information in his possession and shall use the highest rate or combination of rates (i.e., the rate or combination of rates showing the highest amount of U.S. money), certified or uncertified as the case may be, which could be applicable.

Subpart D—Special Duties

§ 159.41 Antidumping duties.

Antidumping duties shall be assessed in accordance with Part 353, Chapter III, of this title. **[TD 80-271.]**

§ 159.42 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the Act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in § 338, Tariff Act of 1930 (19 U.S.C. 1338), shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

§ 159.43 Duties contingent upon foreign export duties, charges, or restrictions.

Additional U.S. Note 1 to Section X, HTSUS (19 U.S.C. 1202), provides for the imposition under certain conditions of additional duties on merchandise covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the ***Customs Bulletin.*** **[TD 89-1.]**

§ 159.44 Special duties on merchandise imported under agreements in restraint of trade.

Whenever it appears that imported articles may be subject to the special duties provided for in § 802, Act of September 8, 1916 (15 U.S.C. 73), the district director shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties. (Sec. 802, 803, 39 Stat. 799; 15 U.S.C. 73, 74.)

§ 159.45 Additional duty for unauthentic claims of antiquity.

When additional duty is imposed in accordance with § 10.53 of this chapter for an unauthentic claim of antiquity, such duty shall be assessed in addition to any other duty imposed on the merchandise by law.

§ 159.46 Marking duties.

(a) *Based on dutiable value.* The marking duty prescribed by § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), shall be assessed upon the dutiable value as defined in § 503, Tariff Act of 1930, as amended (19 U.S.C. 1503).

(b) *Suspension of liquidation.* The liquidation of entries shall not be suspended merely because the merchandise covered thereby is not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise. (Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304.)

§ 159.47 Countervailing duties.

Countervailing duties shall be assessed in accordance with Part 355, Chapter III, of this title. **[TD 80-271.]**

Subpart E—Suspension of Liquidation

§ 159.51 General.

Liquidation of entries shall be suspended only when provided by law or regulation, or when directed by the Commissioner of Customs. Liquidation of entries shall not be suspended simply because issues involved therein may be before the Customs Court in pending litigation, since the importer may seek relief by protesting the entries after liquidation.

§ 159.52 Warehouse entry not liquidated until final withdrawal.

Liquidation of a warehouse or rewarehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time.

§ 159.53 Proof of duty-free or reduced-duty status.

Various provisions in Part 10 of this chapter provide for suspending liquidation of entries covering certain merchandise entered at a conditionally free or conditionally reduced rate of duty, pending production of required proof. Upon production of the required proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

§ 159.54 Open bonds for production of documents.

The liquidation of entries on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending the performance or nonperformance under the bond, unless production of the document is waived in accordance with § 141.92 of this chapter.

§ 159.55 Possible prohibited food, drugs, or other articles.

(a) *Suspension of liquidation.* The liquidation of each entry covering merchandise the subject of § 12.1 of this chapter (which pertains to certain foods, drugs, cosmetics, economic poisons, hazardous substances, dangerous caustic or corrosive substances, and related items) shall be suspended until it is determined whether admission of the merchandise into the U.S. is permitted under the law.

(b) *Allowance for exportation or destruction.* In any case where the admission of such merchandise into the U.S. is refused and the merchandise is exported under Customs supervision in accordance with § 158.45(b) of this chapter, or destroyed under Customs supervision in accordance with § 158.41 of this chapter, the merchandise is exempt from duty and any duties collected thereon shall be refunded. (Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558.)

§ 159.57 Merchandise affected by an American manufacturer's cause of action sustained by the court.

Liquidation of entries for merchandise of the character covered by a decision of the Secretary of the Treasury published in accordance with § 175.24 of this chapter, entered or withdrawn for consumption after the date of publication of a decision of the U.S. Court of International Trade sustaining in whole or in part the cause of action of an American manufacturer, producer, or wholesaler, shall be suspended until final disposition is made of the cause of action. Upon final disposition, such entries shall be liquidated, or, if necessary, reliquidated in accordance with the final judicial decision. (Sec. 516, 46 Stat. 735, as amended; 19 U.S.C. 1516.) **[TD 85-90.]**

§ 159.58 Dumping and countervailing duties; Action by district director.

(a) *Antidumping matters.* Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Antidumping Determination," "Notice of Final Affirmative Antidumping Determination" or "Notice of Violation of Agreement" as provided by Part 353, Chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.* Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Countervailing

Duty Determination," "Notice of Final Affirmative Countervailing Duty Determination" or "Notice of Violation of Agreement," as provided by Part 355, Chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated countervailing duty.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)) [TD 80-271.]

PART 161—GENERAL ENFORCEMENT PROVISIONS

Sec.
161.0 Scope.

Subpart A—General Provisions

161.1 Customs supervision.
161.2 Enforcement for other agencies.
161.3 Prosecution for violation of Customs laws.
161.4 Bribery of Customs officers and employees.
161.5 Compromise of Government claims.

Subpart B—Informer's Compensation

161.11 Claim for compensation by informer.
161.12 Filing of claim.
161.13 Limitation on claims.
161.14 Payment of claims.
161.15 Informer's name confidential.

Authority: 80 Stat. 379, R.S. 251, as amended, sec. 624, 46 Stat. 759, 5 U.S.C. 301, 19 U.S.C. 66, 1624, unless otherwise noted.

Source: T.D. 72-213, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

§ 161.0 Scope.

The provisions of this part set forth the authority and responsibility of Customs officers in the enforcement of Customs laws of the U.S. Also included are provisions relating to import and export controls enforced for other administering agencies, prosecution for violation of Customs laws, bribery of Customs officers and employees, the compromise of Government claims and informer's compensation. **[TD 72-211.]**

Subpart A—General Provisions

§ 161.1 Customs supervision.

Whenever any action or thing is required by the regulations in this chapter, or by any provision of the Customs or navigation laws, to be done or maintained under the supervision of Customs officers, such supervision shall be carried out as prescribed in the regulations of this chapter, or by instructions from the Secretary of the Treasury, or the Commissioner of Customs in particular cases. In the absence of a governing regulation or instruction, supervision shall be direct and continuous, or by such occasional verification as the principal Customs field officer shall direct if such officer shall determine that less intensive supervision will ensure proper enforcement of the law and protection of the revenue. Nothing in this section shall be deemed to warrant any failure to direct and furnish required supervision or to excuse any failure of a party in interest to comply with prescribed procedures for obtaining any required supervision. (Sec. 22, 67 Stat. 520; 19 U.S.C. 1646a)

§ 161.2 Enforcement for other agencies.

(a) *Laws enforced by Customs Service for administering agencies.* Some of the laws enforced in whole or in part by the Customs Service for administering agencies are:

(1) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Bureau of Alcohol, Tobacco, and Firearms and Department of State; **[TD 78-329.]**

(2) Importations and exportations of controlled substances are governed by laws administered by the Bureau of Narcotics and Dangerous Drugs of the Department of Justice;

(3) [Reserved] **[TD 76-21.]**

(4) Importations and exportations of atomic energy source material, fissionable material, and equipment and devices for utilizing or producing fissionable material are subject to laws administered by the Atomic Energy Commission; and

(5) The exportation of articles, other than those previously mentioned herein, are subject to requirements of laws administered by the Department of Commerce.

(b) *Seizure for violation of law.* When articles are imported or are intended to be, are being, or have been exported from the U.S. in violation of law, such articles and any vessel, vehicle, or aircraft knowingly used in their transportation shall be seized and proceeded against. (Sec. 5(b), 40 Stat. 415, as amended, 62 Stat. 716, sec. 502, 68 Stat. 1140, sec. 1, 40 Stat. 223, as amended, sec. 4, 48 Stat. 340, secs. 4, 7, 60 Stat. 759, 764, sec. 414, 68 Stat. 848, as amended; 12 U.S.C. 95a, 18 U.S.C. 545, 19 U.S.C. 1595(a), 22 U.S.C. 401, 42 U.S.C. 1804, 1807, 22 U.S.C. 1934)

§ 161.3 Prosecution for violation of Customs laws.

When there is a seizure or other violation of the Customs laws which requires legal proceedings by civil or criminal action, the district director or special agent in charge of the area involved shall furnish a report to the U.S. attorney in accordance with § 603, Tariff Act of 1930, as amended (19 U.S.C. 1603). Action shall be taken under § 545, title 18, United States Code, only when there is clear indication of a violation of some specific provision of law. (Sec. 603, 46 Stat. 754, as amended, sec. 1, 62 Stat. 716; 18 U.S.C. 545, 19 U.S.C. 1603)

§ 161.4 Bribery of Customs officers and employees.

If, upon investigation, it is determined that money or anything of value was given, offered, or promised to a Customs officer or employee with the intent to control or influence such officer or employee in the performance of his official duties, the matter shall be referred to the U.S. attorney for prosecution under § 201, title 18, United States Code. (Sec. 1, 76 Stat. 1119, as amended; 18 U.S.C. 201)

§ 161.5 Compromise of Government claims.

(a) *Offer.* An offer made pursuant to § 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in compromise of a Government claim arising under the Customs laws and the terms upon which it is made shall be stated in writing addressed to the Commissioner of Customs. The offer shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim.

(b) *Deposit of specific sum tendered.* No offer in which a specific sum of money is tendered in compromise of a Government claim under the Customs laws will be considered by the Commissioner of Customs until due notice is received that such sum has been properly deposited in the name of the person submitting the offer with the Treasurer of the U.S. or a Federal Reserve bank. A proponent at a distance from a Federal Reserve bank may perfect his offer

by tendering a bank draft for the amount of the offer payable to the Secretary of the Treasury for collection and deposit. If the offer is rejected, the money will be returned to the proponent. (Sec. 617, 46 Stat 757, as amended; 19 U.S.C. 1617)

Subpart B—Informer's Compensation

§ 161.11 Claim for compensation by informer.

(a) *Persons not officers of U.S.* Any person not an officer of the U.S. who, in accordance with § 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), detects, seizes, and reports any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the Customs or navigation laws, or who furnishes original information concerning any fraud upon the Customs revenue or a violation of the Customs or navigation laws perpetrated or contemplated, may file a claim for an award of compensation. Any Customs officer to whom the information is furnished shall advise the informant of his right to claim such an award.

(b) *Officer of the U.S.* Officers of the U.S. are precluded by § 620, Tariff Act of 1930 (19 U.S.C. 1620) from directly or indirectly receiving or contracting for any portion of a compensation award. (Sec. 619, 620, 46 Stat. 758, as amended; 19 U.S.C. 1619, 1620)

§ 161.12 Filing of claim.

A claim for an award of compensation shall be filed in duplicate on Customs Form 4623 with the district director, but any Customs officer may receive such a claim for transmittal to the district director. Additional copies of the claim required by the district director shall be furnished on demand. Application may be made directly to the Commissioner of Customs where for any reason a claim has not been transmitted by the district director to the Commissioner. No claim for compensation shall be forwarded to the Commissioner unless a sum of not less than $5 is available for an award. (Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619)

§ 161.13 Limitation on claims.

Claimants may be paid 25 per centum of the net amount recovered from duties withheld, or any fine, penalty, or forfeiture incurred, but such amount shall not exceed $50,000 regardless of the number of recoveries growing out of the information furnished. (Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619)

§ 161.14 Payment of claims.

No claim under § 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), shall be paid until the amount recovered has been deposited in the proper account. Claims shall not be paid out of the proceeds of sale. (Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619).

§ 161.15 Informer's name confidential.

The informer's name and address shall be kept confidential. No files nor information concerning the informer shall be permitted to get into the possession of unauthorized persons. No information shall be revealed which might aid the offenders in identifying the informer.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

Sec.
162.0 Scope.

Subpart A—Inspection, Examination, and Search

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Authority: 80 Stat. 379, R.S. 251, as amended, sec. 624, 46 Stat. 759, 5 U.S.C. 301, 19 U.S.C. 1624. The provisions of subpart B also issued under sec. 595, 46 Stat. 752, as amended; 19 U.S.C. 1595, unless otherwise noted.

Source: T.D. 72-211, 37 FR 16486, Aug. 15, 1972, unless otherwise noted.

§ 162.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the examination of records and persons in connection with any audit or other inquiry or investigation conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duties and taxes due or which may be due, for determining liability for fines, penalties, and forfeitures, or for insuring compliance with the laws and regulations administered by Customs. It also contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. It also contains provisions for Customs enforcement of the controlled substances, narcotics and marihuana laws. Provisions relating to petitions for remission or mitigation of fines, penalties, and forfeitures incurred are contained in Part 171 of this chapter. **[TDs 72-211, 79-159.]**

Subpart A—Recordkeeping, Inspection, Examination, and Search

§ 162.1 [Reserved] [TD 79-159.]

§ 162.1a Definitions.

When used in §§ 162.1a through 162.1i, the following terms shall have the meaning indicated:

(a) *Records.* "Records" means:

(1) Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (e.g., magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents which:

(i) Pertain to any importation, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the entry of merchandise;

(ii) Are of the type normally kept in the ordinary course of business; and

(iii) Are sufficiently detailed:

(A) To establish the right to make entry,

(B) To establish the correctness of any entry,

(C) To determine the liability of any person for duties and taxes due, or which may be due, the U.S.,

(D) To determine the liability of any person for fines, penalties, and forfeitures, and

(E) To determine whether the person has complied with the laws and regulations administered by the Customs Service; and

(2) Any other documents required under laws or regulations administered by the Customs Service.

(b) *Third-party recordkeeper.* "Third-party recordkeeper" means any Customs broker, attorney or accountant.

(c) *Summons.* "Summons" means any summons issued under this subpart which requires either the production of records or the giving of testimony, or both.

(d) *Technical data.* "Technical data" includes records, diagrams, and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the U.S., and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media. **[TD 79-159.]**

§ 162.1b Recordkeeping.

(a) *Who must keep records.* Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any merchandise into the Customs territory of the U.S., shall make and keep records as defined in § 162.1a(a).

(b) *Domestic transaction excluded.* A person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported and is not required to make and keep records unless:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise. **[TD 79-159.]**

§ 162.1c Record retention period.

Unless a different period of time is provided elsewhere in the chapter with respect to a specific type of record, any record required or made under § 162.1b shall be kept for 5 years from the date of entry of the merchandise. **[TD 79-159.]**

§ 162.1d Examination of records and witnesses.

(a) *Examination.* During the course of any inquiry or investigation initiated:

(1) To determine the correctness of any entry, the liability of any person for duties and taxes due or which may be due, or any liability for fines, penalties and forfeitures, or

(2) To insure compliance with the laws and regulations administered by the Customs Service, any Customs officer, during normal business hours and, to the extent possible, at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant records, statements, declarations, or other documents by providing the person with reasonable notice, either orally or in writing, which describes the records with reasonable specificity.

(b) *Summons.* During the course of any inquiry or investigation initiated for the reasons set forth in paragraph (a) of this section, the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of district director (area director in region II) or special agent in charge, upon reasonable notice, may issue a summons to:

(1) Any person who imported merchandise, or knowingly caused merchandise to be imported,

(2) Any officer, employee, or agent of a person who imported merchandise or knowingly caused merchandise to be imported,

(3) Any person having possession, custody, or care of records relating to importations, or

(4) Any other person deemed proper to either produce records or give testimony, or both.

(c) *Transcript of testimony under oath.* Testimony of any person taken under paragraph (a) or (b) of this section may be taken under oath and when so taken shall be transcribed. When testimony is transcribed, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of a Customs officer. **[TD 79-159.]**

§ 162.1e Contents of summons.

(a) *Summons for person.* Any summons issued under § 162.1d(b) to compel appearance shall state:

(1) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(2) The address where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(3) The time of appearance; and

(4) The name, address, and telephone number of the Customs officer issuing the summons.

(b) *Summons of records.* If the summons requires the production of records, the summons, in addition to containing the information required by paragraph (a) of this section, shall describe the records with reasonable specificity. **[TD 79-159.]**

§ 162.1f Service of summons.

(a) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this part.

(b) *Method of service*—(1) *Natural person.* Service upon a natural person shall be made by personal delivery.

(2) *Corporation, partnership, or association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states. **[TD 79-159.]**

§ 162.1g Third-party recordkeeper.

(a) *Notice.* Except as provided by paragraph (f) of this section, if a summons issued under § 162.1d to a third-party recordkeeper requires the production of records or testimony relating to import transactions of any person other than the person summoned, and the person is identified in the description of the records in the summons, notice of the summons shall be provided the person identified in the description of the records contained in the summons.

(b) *Time of notice.* Notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 162.1f, but in no event shall notice be given less than 10 business days before the date set in the summons for the examination of records or persons.

(c) *Contents of notice.* The issuing officer shall insure that any notice issued under this section includes a copy of the summons and contains the following information:

(1) That compliance with the summons may be stayed if written direction is given by the person receiving notice to the person summoned not to comply with the summons.

(2) That a copy of the direction not to comply and a copy of the summons shall be mailed by registered or certified mail to the person summoned at the addresses in the summons and to the issuing Customs officer.

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given.

(d) *Service of notice.* The issuing officer shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 162.1f for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination precluded.* If notice is required by this section, no records may be examined and no testimony may be taken before the date fixed in the summons as the date to examine the records or to take the testimony. If the owner, importer, consignee, or their agent, or any other person concerned issues a stay of the summons, no examination shall take place, and no testimony shall be taken, without the consent of the person staying compliance, or without an order issued by a U.S. district court.

(f) *Exceptions to notice*—(1) *Personal liability for duties and taxes.* This section does not apply to any summons served on the person, or any officer or employee of the person, with respect to whose liability for duties and taxes the summons is issued.

(2) *Verification.* This section does not apply to any summons issued to determine whether or not records of the import transactions of an identified person have been made or kept.

(3) *Court order.* Notice shall not be given if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe giving notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records. **[TD 79–159.]**

§ 162.1h Enforcement of summons.

Whenever any person does not comply with a summons issued under § 162.1d, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business. **[TD 79–159.]**

§ 162.1i Failure to comply with court order.

(a) *Importations prohibited.* If a person fails to comply with a court order enforcing the summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt,

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account, and

(2) May withhold delivery of merchandise imported by that person, directly, or indirectly, or for that person's account.

(b) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery, the merchandise shall be considered abandoned, and shall be sold at public auction or otherwise disposed of in accordance with Subpart E of this part. **[TD 79–159.]**

§ 162.2 [Reserved] [TD 79–159.]

§ 162.3 Boarding and search of vessels.

(a) *General authority.* A Customs officer, for the purpose of examining the manifest and other documents and papers and examining, inspecting and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the U.S. or within the Customs waters of the U.S.;

(2) Any American vessel on the high seas;

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703–1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) *Search of army or naval vessel.* If the district director or special agent in charge believes that sufficient grounds exist to justify a search of any army or navy vessel, the facts shall be reported to the commanding officer or master of the vessel with a request that he cause a full search to be made, and advise the district director or special agent in charge of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crewmembers examined and passed, the district director or special agent in charge believes that sufficient grounds exist to justify the continuance of Customs supervision of the vessel, the commanding officer or master of the vessel shall be advised accordingly.

(c) *Assistance of other agencies.* Customs officers are authorized to assist any other agency in the enforcement of U.S. laws on any vessel. (Secs. 455, 581, 46 Stat. 716, as amended, 747, as amended; 19 U.S.C. 1455, 1581) **[TD 83–238.]**

§ 162.4 Search for letters.

A Customs officer may search vessels for letters which may be on board or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to the orders of the postal authorities. (Secs. 604, 605, 84 Stat. 728; 39 U.S.C. 604, 605)

§ 162.5 Search of arriving vehicles and aircraft.

A customs officer may stop any vehicle and board any aircraft arriving in the U.S. from a foreign country for the purpose of examining the manifest and other documents and papers and examining, inspecting, and searching the vehicle or aircraft. (Sec. 581, 46 Stat. 747, as amended, sec. 1109, 72 Stat. 799, as amended; 19 U.S.C. 1581, 49 U.S.C. 1509)

§ 162.6 Search of persons, baggage, and merchandise.

All persons, baggage, and merchandise arriving in the Customs territory of the U.S. from places outside thereof are liable to inspection and search by a Customs officer. District directors and special agents in charge are authorized to cause inspection, examination, and search to be made under § 467, Tariff Act of 1930, as amended (19 U.S.C. 1467), of persons, baggage, or merchandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port or place in the U.S. or the Virgin Islands, if such action is deemed necessary or appropriate. (Secs. 461, 496, 46 Stat. 717, 727, as amended, sec. 11, 52 Stat. 1083, as amended; 19 U.S.C. 1461, 1467, 1496)

§ 162.7 Search of vehicles, persons, or beasts.

A Customs officer may stop, search, and examine any vehicle, person, or beast, or search any truck or envelope wherever found, in accordance with § 3061 of the Revised Statutes (19 U.S.C. 482).

Subpart B—Search Warrants

§ 162.11 Authority to procure warrants.

Customs officers are authorized to procure search warrants under the provisions of § 595, Tariff Act of 1930, as amended (19 U.S.C. 1595). However, a Customs officer who is lawfully on any premises and is able to identify merchandise which has been imported contrary to law may seize such merchandise without a warrant. If merchandise is in a building on the boundary, see § 123.71 of this chapter.

§ 162.12 Service of search warrant.

A search warrant shall be served in person by the officer to whom it is issued and addressed. In serving a search warrant, the officer shall leave a copy of the warrant with the person in charge or possession of the premises, or in the absence of any person, the copy shall be left in some conspicuous place on the premises searched.

§ 162.13 Search of rooms not described in warrant.

When a Customs officer is acting under a warrant to search the rooms in a building occupied by persons named or described in the warrant, no search shall be made of any rooms in such building which are not described in the warrant as occupied by such persons.

§ 162.14 Removal of letters and other documents.

Customs officers to whom a warrant is issued to search for and seize merchandise are without authority to remove letters and other documents and records, unless they themselves are instruments of crime and are seized as an incident to a lawful arrest.

§ 162.15 Receipt for seized property.

A receipt for property seized under a search warrant shall be left with the person in charge or possession of the premises, or in the absence of any person, the receipt shall be left in some conspicuous place on the premises searched.

Subpart C—Seizures

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, §162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized. **[TDs 77-136, 79-160.]**

(b) *Seizure by persons other than Customs officers.* The district director may adopt a seizure made by a person other than a Customs officer if such district director has reasonable cause to believe that the property is subject to forfeiture under the Customs laws.

(c) *Seizure by State official.* If a duly constituted State official has seized any merchandise, vessel, aircraft, vehicle, or other conveyance under provisions of the statutes of such State, such property shall not be seized by a Customs officer unless the property is voluntarily turned over to him to be proceeded against under the Federal statutes. (R.S. 3061, secs. 581, 582, 602, 46 Stat. 747, as amended, 748, 754, as amended; 19 U.S.C. 482, 1581, 1582, 1602)

§ 162.22 Seizure of conveyances.

(a) *General applicability.* If it shall appear to any officer authorized to board conveyances and make seizures that there has been a violation of any law of the U.S. whereby a vessel, vehicle, aircraft, or other conveyance, or any merchandise on board of or imported by such vessel, vehicle, aircraft, or other conveyance is liable to forfeiture, the officer shall seize such conveyance and arrest any person engaged in such violation. Common carriers are exempted from seizure except under certain specified conditions as provided for in § 594, Tariff Act of 1930 (19 U.S.C. 1594).

(b) *Facilitating importation contrary to law.* Every vessel, vehicle, animal, aircraft, or other conveyance which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the U.S. contrary to law, shall be seized and held subject to forfeiture, and any person who directs, assists

financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

(c) *Common carrier clearance.* Unless specifically authorized by law, clearance of vessels within the common carrier exception of § 594, Tariff Act of 1930 (19 U.S.C. 1594), shall not be refused for the purpose of collecting a fine imposed upon the master or owner, unless either of them was a party to the illegal act. The Government's remedy in such cases is limited to an action against the master or owner.

(d) *Retention of vessel or vehicle pending penalty payment.* If a penalty is incurred under § 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), by a person in charge of a vessel or vehicle and the vessel or vehicle is not subject to seizure, such vessel or vehicle may be held by the district director under § 594, Tariff Act of 1930, until the penalty incurred by the person in charge has been settled.

(e) *Maritime Administration vessels; exemption from penalty.* (1) When a vessel owned or chartered under bareboat charter by the Maritime Administration and operated for its account becomes liable for the payment of a penalty incurred for violation of the Customs revenue or navigation laws, clearance of the vessel shall not be withheld nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

(2) This exemption shall not in any way be considered to relieve the master of any such vessel or other person incurring such penalties from personal liability for payment. (Sec. 1, 62 Stat. 717, secs. 459, 460, 594, 46 Stat. 717, as amended, 751, secs. 1, 3–8, 49 Stat. 517, 518, 519, as amended, 520; 18 U.S.C. 546, 19 U.S.C. 1459, 1460, 1594, 1701, 1703–1708)

Subpart D—Procedure When Fine, Penalty, or Forfeiture Incurred

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* Written notice of any fine or penalty incurred as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the claim or seized property. The notice shall also inform each interested party of his right to apply for relief under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), or any other applicable statute authorizing mitigation of penalties or remission of forfeitures, in accordance with Part 171 of this chapter. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney or the Department of Justice if the penalty was assessed under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for institution of judicial proceedings, or summary forfeiture proceedings will be begun. **[TDs 79–160, 85–90.]**

(b) *Contents of notice.* The notice shall contain the following: **[TD 78–38.]**

(1) The provisions of law alleged to have been violated;

(2) A description of the specific acts or omissions forming the basis of the alleged violations;

(3) If the alleged violations involve the entry or attempted entry of merchandise,

(i) A description of the merchandise and the circumstances of its entry or attempted entry, and

(ii) The identity of each entry, if specific entries are involved; and

(4) If the alleged violations involve a loss of revenue,

(i) The total loss of revenue and how it was computed, and

(ii) The loss of revenue attributable to each entry, if readily susceptible to calculation.

(c) *Demand for deposit in case of smuggled articles of small value.* In the case of smuggled articles of small value, demand shall be made for immediate deposit of an amount equivalent to the domestic value of the articles on account of the liability to a penalty incurred as distinct from liability of the goods to forfeiture. Such sum shall be deposited whether or not a petition for relief is filed in accordance with Part 171 of this chapter. A demand for deposit need not be made in connection with any liability incurred by the master of a vessel under the provisions of § 453, Tariff Act of 1930, as amended (19 U.S.C. 1453).

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties, and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief as set forth in Part 171 of this chapter, or fails to pay the fine or penalty within 30 days from the mailing date of the violation/penalty notice provided in § 162.31 (unless additional time is authorized for filing a petition, as set forth in Part 171 of this chapter) the district director, shall, after any required collection action is complete, refer any fine or penalty case promptly to the U.S. attorney, or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In the case of property subject to forfeiture, the district director, where appropriate, shall complete administrative forfeiture proceedings or shall refer the matter promptly to the U.S. attorney, or the Department of Justice if the case arose under section 592, in accordance with the provisions of subparagraph (c) below, unless the Commissioner of Customs expressly authorizes other action.

(b) *Institution of forfeiture proceedings before completion of administrative procedures.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(c) *Seized property not eligible for administrative forfeiture.* If the seized property is not eligible for administrative forfeiture, and neither a petition for relief in accordance with Part 171 of this chapter, nor an offer to pay the domestic value as provided for in section 162.44, is made within 30 days (unless additional time has been authorized under Part 171 of this chapter), the district director shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made, or the Department of Justice if the penalty was assessed under section 592. **[TDs 78–394, 79–160, 85–90, 85–195.]**

Subpart E—Treatment of Seized Merchandise

§ 162.41 Reserved [TD 84-18.]

§ 162.42 Proceedings by libel.

If seizure is made under a statute which provides that the property may be seized and proceeded against by libel, the summary forfeiture procedures set forth in §§ 162.45, 162.46, and 162.47 do not apply. Such cases shall be referred to the U.S. attorney. The district director may request the U.S. attorney to seek a decree of forfeiture providing for delivery of the property to the district director for sale or other appropriate disposition, if such property is not to be retained for official use.

§ 162.43 Appraisement.

(a) *Property under seizure and subject to forfeiture.* Seized property shall be appraised as required by § 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). The term "domestic value" as used therein shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry, or the date of the filing of the document, or the commission of the act forming the basis of the claim, whichever is later. **[TDs 79-160, 85-123.]**

§ 162.44 Released on payment of appraised value.

(a) *Value exceeding $100,000.* Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding $100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the district director for the district in which the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over $100,000*—(1) *Authority to accept offer.* The district director is authorized to accept a written offer pursuant to § 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed $100,000;

(ii) The district director is satisfied that the claimant has, in fact, a substantial interest in the property; and **[TDs 74-276, 85-195.]**

(iii) Entry of the seized property into the commerce of the U.S. is not prohibited by law. **[TD 74-276.]**

(2) *Referral of offer.* The district director shall refer to the Commissioner of Customs any offer where it appears that the claimant does not have a substantial interest in the seized property or where it appears it would not be in the best interest of the U.S. to accept.

(c) *Retention of property.* The district director shall retain custody of the property pending payment of the amount of the offer when the application is approved. (Sec. 614, 46 Stat. 757, as amended; 19 U.S.C. 1614)

§ 162.45 Summary forfeiture: Property other than Schedule I controlled substances. Notice of seizure and sale.

(a) *Contents.* The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding $100,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, shall:

(1) Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;

(2) State the time, cause, and place of seizure;

(3) State that any person desiring to claim property must appear at a designated place and file with the district director within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of $2,500 or 10% of the value of the claimed property, whichever is lower, but not less than $250, in default of which the property will be disposed of in accordance with the law; and

(4) State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the district director. **[TDs 78-394, 84-213, 85-123.]**

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person other than Schedule 1 controlled substances (as defined in 21 U.S.C. 802(6) and 812) exceeds $2,500, the notice shall be published in a newspaper in the Customs district and the judicial district in which the property was seized for at least three successive weeks. All known parties-in-interest shall be notified of the newspaper and expected dates of publication of such notice. **[TD 85-195.]**

(2) In all other cases, except for Schedule I controlled substances (see § 162.45a), the notice shall be published by posting in a conspicuous place accessible to the public in the customhouse nearest the place of seizure and in the customhouse at the headquarters port for the Customs district, with the date of posting noted thereon, and shall be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures shall be advertised as one unit. **[TDs 82-89, 83-72.]**

(c) *Delay of publication.* Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the district director has reason to believe that a petition for administrative relief in accord with Part 171 of this chapter will be filed. **[TDs 85-123, 85-195.]**

§ 162.45a Summary forfeiture of Schedule I controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801) provides that all controlled substances in Schedule I (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold, or offered for sale in violation of the Act shall be deemed contraband and seized and summarily forfeited to the U.S. (21 U.S.C. 881(f)). By reference, the Controlled Substances Import and Export Act (21 U.S.C. 951) incorporates this contraband forfeiture provision. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I controlled substances, the appropriate Regional Commissioner of Customs or his designee shall contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR 1312). If upon inquiry the Regional Commissioner or his designee is notified that no permit for lawful importation has been issued, he shall declare the seized substances contraband and forfeited pursuant to 21 U.S.C. 881(f). Inasmuch as such substances are Schedule I controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they shall be preserved to the extent and in the quantities necessary for that purpose. **[TD 83-72.]**

§ 162.46 Summary forfeiture: Disposition of goods.

(a) *General.* If no petition for relief from the forfeiture is filed in accordance with the provisions of Part 171 of this chapter, or if a petition was filed and has been denied, and the property is not retained for official use, it shall be disposed of in accordance with § 609, Tariff Act of 1930, as amended (19 U.S.C. 1609) or § 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b)). **[TDs 78-394, 79-159, 85-123.]**

(b) *Articles required to be inspected by other Government agencies.* Before seized drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by other Government agencies are sold, they shall be inspected by a representative of such agency to ascertain whether or not they meet the requirements of the laws and regulations of that agency, and if found not to meet such requirements, they shall be destroyed forthwith.

(c) *Sale*—(1) *General.* If the forfeited property is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 127 of this chapter. The district director may postpone the sale of small seizures until he believes the proceeds of a consolidated sale will pay all expenses. **[TD 77-12.]**

(2) *Transfer to another district for sale.* Property shall be moved to and sold in such other Customs district as the Commissioner of Customs may direct pursuant to the provisions of § 611, Tariff Act of 1930 (19 U.S.C. 1611), if:

(i) The laws of a State in which property is seized and forfeited prohibit the sale of such property; or

(ii) The Commissioner is of the opinion that the sale of forfeited property may be made more advantageously in another Customs district.

(d) *Destruction.* (1) If, after summary forfeiture of property is completed, it appears that the net proceeds of sale will not be sufficient to pay the costs of sale, the district director may order destruction of the property. Any vessel or vehicle summarily forfeited for violation of any law respecting the Customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.

(2) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may proceed forthwith. **[TD 85-195.]**

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the Commissioner of Customs or his designee determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency, or

(2) By gift to any charitable institution the Commissioner of Customs or his designee determines has a need for the articles for medical purposes. (Secs. 609, 611, 46 Stat. 755, as amended, sec. 5, 49 Stat. 519; 19 U.S.C. 1609, 1611, 1705 (R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-211, 37 FR 16486, Aug. 15, 1972, as amended by T.D. 72-12, 41 FR 56629, Dec. 29, 1976] **[TD 79-159.]**

§ 162.47 Claim for property subject to summary forfeiture.

(a) *Filing of claim.* Any person desiring to claim under the provisions of § 608, Tariff Act of 1930 (19 U.S.C. 1608), seized property not exceeding $100,000 in value (however there is no limit in value of merchandise, the importation of which is prohibited, or in the value of vessels, vehicles or aircraft used to import, export, transport, or store any controlled substance, that may be seized and forfeited) and subject to summary forfeiture, shall file a claim to such property with the district director within 20 days from the date of the first publication of the notice prescribed in § 162.45. **[TDs 78-394, 85-123.]**

(b) *Bond for costs.* Except as provided in paragraph (e) of this section, the bond in the penal sum of $2,500 or 10% of the value of the claimed property, whichever is lower, but not less than $250, required by § 608, Tariff Act of 1930, to be filed with a claim for seized property shall be on Customs Form 301, containing the bond conditions set forth in § 113.72 of this chapter. **[TDs 81-1, 84-213, 85-123.]**

(c) *Claimant not entitled to possession.* The filing of a claim and the giving of a bond if required, pursuant to § 608, Tariff Act of 1930, shall not be construed to entitle the claimant to possession of the property. Such action only stops the summary forfeiture proceeding. **[TD 81-1.]**

(d) *Report to the U.S. attorney.* When the claim and bond if required, are filed within the 20-day period, the district director shall report the case to the U.S. attorney for the institution of condemnation proceedings. (Sec. 608, 46 Stat. 755, as amended; 19 U.S.C. 1608) **[TD 81-1.]**

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the district director shall waive the bond requirement for any person who claims an interest in the seized property. **[TD 81-1.]**

§ 162.48 Summary sale of perishable and other property.

Seized property which is perishable or otherwise enumerated in section 612, Tariff Act of 1930, as amended (19 U.S.C. 1612), and is covered by the provisions of section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), shall be advertised for sale and sold at public auction at the earliest possible date. The district director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims. (Sec. 612, 46 Stat. 756, as amended; 19 U.S.C. 1612) **[TDs 78–394, 85–123, 85–195.]**

§ 162.49 Forfeiture by court decree.

(a) *Report to the U.S. attorney or the Department of Justice if the penalty was assessed under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).* When it is necessary to institute legal proceedings in order to forfeit seized property, or to forfeit the value of property subject to forfeiture, the district director or the special agent in charge of the area involved shall furnish a report to the U.S. attorney or the Department of Justice, if the penalty was assessed under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in accordance with the provisions of § 603, Tariff Act of 1930, as amended (19 U.S.C. 1603). **[TD 85–90.]**

(b) *Bonding of seized property.* When a claimant desires to file a bond for the release of seized property which is the subject of a court proceeding, he shall be referred to the U.S. attorney. The Government is entitled to recover the penal sum of the bond if forfeiture is then decreed. (Sec. 201, 72 Stat. 1412; 26 U.S.C. 5688(c))

§ 162.50 Forfeiture by court decree: Disposition.

(a) *Sale.* Forfeited property decreed by the court for sale or disposition by the district director shall be disposed of in the same manner as property summarily forfeited. (See § 162.46.)

(b) *Transfer to other districts for sale.* If the laws of the State in which property is seized and forfeited prohibit the sale of such property, or if the Commissioner of Customs is of the opinion that the sale of forfeited property may be made more advantageously in another Customs district, application may be made to the court to permit disposition in accordance with the provisions of § 611, Tariff Act of 1930 (19 U.S.C. 1611). If the court permits such disposition, the property shall be moved to and sold in such other district as the Commissioner may direct provided it has been cleared for sale.

(c) *Destruction*—(1) *Proceeds of sale not sufficient.* Property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or the Commissioner of Customs for disposition in accordance with § 611, Tariff Act of 1930 (19 U.S.C. 1611).

(2) *For protection of the revenue.* Any vessel or vehicle forfeited under a decree of any court for violation of any law respecting the Customs revenue may be destroyed in lieu of sale when such destruction is authorized by the Commissioner of Customs to protect the revenue if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or Commissioner of Customs for disposition under the provisions of 19 U.S.C. 1705. (Sec. 611, 46 Stat. 755, sec. 5, 49 Stat. 519; 19 U.S.C. 1611, 1705)

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) *Order of payment of expenses incurred.* (1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), and § 171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, of if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay expenses fully, they shall be paid pro rata. **[TD 84–78.]**

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the U.S. as a Customs or navigation fine. **[TD 79–160.]**

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery. **[TD 79–160.]**

§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides for the disposition of the proceeds from the sale of property seized and forfeited under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in § 162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the district director shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the district director shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property.* If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a "sale" for the purposes of § 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b). **[TD 79–160.]**

Subpart F—Controlled Substances, Narcotics, and Marihuana

§ 162.61 Importing and exporting controlled substances.

It shall be unlawful to import to or export from the U.S. any controlled substance or narcotic drug listed in schedules I through V of the Controlled Substances Act (Sec. 202, 84 Stat. 1247; 21 U.S.C. 812), unless there has been compliance with the provisions of said Act, the Controlled Substances Import and Export Act and the regulations of the Drug Enforcement Administration. (Secs. 1002, 1003, 1007, 84 Stat. 1285, 1286, 1288; 21 U.S.C. 952, 953, 957) **[TD 78–99.]**

§ 162.62 Permissible controlled substances on vessels, aircraft, and individuals.

Upon compliance with the provisions of the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951), and the regulations of the Drug Enforcement Administration (21 CFR 1301.28, 1311.27), controlled substances listed in schedules I through V of the Controlled Substances Act may be held: **[TD 78–99.]**

(a) On vessels engaged in international trade in medicine chests and dispensaries.

(b) In aircraft operated by an air carrier under a certificate or permit issued by the Federal Aviation Administration for stocking in medicine chests and first aid packets.

(c) By an individual where lawfully obtained for personal medical use or for administration to an animal accompanying him to enter or depart the U.S. (Secs. 1002, 1006, 84 Stat. 1285, 1288; 21 U.S.C. 952, 956)

§ 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801) and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951), shall be handled in the same manner as other Customs arrests and seizures. However, Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law shall be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a. (Sec. 511(d), 1016, 84 Stat. 1276, 1291; 21 U.S.C. 881(d), 966) **[TDs 82–89, 83–72.]**

§ 162.64 Custody of controlled substances.

All controlled substances seized by a Customs officer shall be delivered immediately into the custody of the district director in whose district the seizure is made, together with a full report of the circumstances of the seizure. (Sec. 511(d), 1016, 84 Stat. 1277, 1291; 21 U.S.C. 881(d), 966)

§ 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

(a) *Cargo or baggage containing unmanifested narcotic drugs or marihuana.* When a package of regular cargo or a passenger's baggage otherwise properly manifested is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not shown as such on the manifest, the penalties prescribed in § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed with respect to such narcotic drug or marihuana.

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility. **[TD 86–59.]**

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle and to the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible. In the case of a vessel, if bond has been given, the notice also shall be sent to each surety. When a petition for relief from such penalty has been filed in accordance with Part 171 of this chapter, and a decision has been made thereon, the district director shall send notice of such decision to the interested persons together with a demand for

any payment required under the terms of such decision. **[TD 79–160.]**

(d) *Referral to the U.S. attorney.* If the penalty incurred under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in Part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the district director, after required collection action, shall refer the case to the U.S. attorney. **[TDs 79–160, 86–59.]**

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under § 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the district director is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the district director is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs. **[TD 86–59]**

§ 162.66 Penalties for unlading narcotic drugs or marihuana without a permit.

In every case where a narcotic drug or marihuana is unladen without a permit, the penalties prescribed in § 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed. Penalties shall be assessed under this section when a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade.

Subpart G—Special Procedures for Certain Violations

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of §§ 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which proceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation—

(1) Involves television receivers that are the products of Japan and were or are the subject of antidumping proceedings (see §153.46 of this chapter),

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of Subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise. **[TD 79–160.]**

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties.* "Loss of duties" means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* "Actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) *Potential loss of duties.* "Potential loss of duties" means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Noncommercial importation.* "Noncommercial importation" means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(c) *Clerical error.* "Clerical error" means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(d) *Mistake of fact.* "Mistake of fact" means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty. **[TD 79–160.]**

(e) *Discloses the circumstances of the violation.* When used in § 162.74(a), the term "discloses the circumstances of the violation" means the act of providing to Customs a written statement which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation included in the disclosure by entry number or by indicating each Customs port of entry and the approximate dates of entry;

(3) Specifies the material false statements or material omissions made; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry documents, and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date or within an extension of the 30-day period as the district director may permit in order for the person to obtain the information or data. **[TD 84–18.]**

§ 162.72 Penalties and forfeitures under §§ 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the district director has reasonable cause to believe that a violation of § 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed

against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of § 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $500 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the U.S. who does not produce the manifest on demand.

(2) A penalty of $500 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $500 (see § 122.161, of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage"). **[TDs 86–59, 88–12.]**

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 122.162 of this chapter. **[TDs 79–160, 88–12.]**

§ 162.73 Penalties under § 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, or

(ii) If there is no loss of duties, 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, or

(ii) If there is no loss of duties, 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, or

(ii) If there is no loss of duties, 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under § 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct. **[TD 79–160.]**

§ 162.74 Prior disclosure.

(a) *In general.* (1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in § 162.71(e) of this Part), in writing to a district director before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (h) of this section. **[TD 86–119.]**

(2) A person shall be accorded the full benefit of prior disclosure treatment if that person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the requirements of a written disclosure statement pursuant to this section if the district director is satisfied that the information was provided before or without knowledge of the commencement of a formal investigation, and the information provided includes substantially the information specified in § 162.71(e). The provision of this information need not be in writing.

(b) *Time of prior disclosure.* (1) If the documents which provide the disclosing information are sent by certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent otherwise by mail or are delivered in person, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs, stating the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time which Customs was provided with information which substantially complies with the requirements of § 162.71(e).

(4) Any documents relating to a prior disclosure should be addressed to the immediate attention of the district director.

(c) *Referral for investigation.* Any disclosure of a violation shall be referred immediately by the district director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office shall immediately return the disclosure, together with its report, to the district director for appropriate action.

(d) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date recorded in writing as the date on which the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification, or other technical investigation, on the date recorded in writing by an investigating agent in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which the information was received;

(4) In all other cases, on the earliest of the following:

(i) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(ii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation;

(iii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

(e) *Expansion of formal investigation.* A formal investigation is deemed to have commenced as to additional violations (outside the scope of the original investigation but committed by the same party) on the earliest of the following:

(1) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the additional violations;

(2) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of additional violations; or

(3) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the additional violations.

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An import specialist, regulatory auditor, inspector or other Customs officer, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592, so informed the person concerning the type of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(3) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information. **[TD 86–119.]**

(g) *Penalty claims not requiring formal investigation.* A prior disclosure may not be made after a determination by an authorized Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 and that a claim for monetary penalty shall be issued without commencement of a formal investigation. Such determination shall be evidenced as follows:

(1) By the issuance of a pre-penalty notice:

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the U.S. or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under 19 U.S.C. 1592, by the act of seizure.

(h) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(i) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(j) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if;

(1) The disclosed violation involves a loss of duties of $500 or less;

(2) Any actual loss of duties has been deposited;

(3) There is no evidence that the violation was fraudulent; and

(4) There are no other compelling reasons for a penalty proceeding, such as history of similar violations. **[TDs 79–160, 84–18.]**

§ 162.75 Seizures limited under § 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the district director has reasonable cause to believe that a person has violated the statute and that:

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the U.S.,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the U.S.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the district director shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise*—(1) *To person from whom seized.* The district director shall return seized merchandise to the person from whom seized upon the deposit of security, in a form acceptable to the district director, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the U.S. is not prohibited or restricted.

(2) *To others.* The district director may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the district director, if the entry of the merchandise into the commerce of the U.S. is not prohibited or restricted, and if:

(i) The district director is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the U.S. and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with Part 171 of this chapter, nor compliance made with the decision within the time provided by law, the district director immediately shall report the facts and refer the case to the Department of Justice for the institution of court proceedings. **[TDs 79–160, 85–90, 86–118; 88–43.]**

§ 162.76 Prepenalty notice for violations of § 466 or § 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of § 466 or § 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $500 or less. **[TD 79–160.]**

§ 162.77 Prepenalty notice for violations of § 592, Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulations allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occurred as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation. **[TD 79–160.]**

§ 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The district director may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the district director, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the district director, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in Part 171 of this chapter (except for the reason described in § 171.15(a)(4)), relating to extensions of time for filing petitions for relief. In addition, an extension may be granted if, upon the request of the alleged violator, the Commissioner of Customs determines

that the case involves an issue which is a proper matter for submission to Customs Headquarters under the internal advice procedures of § 177.11(b)(2) of this chapter. Other extensions may be authorized only by Headquarters. **[TD 85–195.]**

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the district director, in his discretion, may allow further presentations. **[TD 79–160.]**

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under § 592(d), Tariff Act of 1930, as amended (19 U.S.C. 1592(d)), the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice. **[TD 79–160.]**

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1) or § 162.77(b)(1), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter. **[TD 79–160.]**

§ 162.79b Recovery of actual loss of duties.

Whether or not a monetary penalty is assessed under this subpart, the district director shall require the deposit of any actual loss of duties resulting from a violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties in any case in which a monetary penalty is not assessed or a written notice of claim of monetary penalty is not issued, the district director shall issue a written notice to the person of the liability for the actual loss of duties. The notice shall identify the merchandise and entries involved, state the loss of duties and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days from the date of the notice. Any determination of actual loss of duties under this section is subject to review upon written application to the Commissioner of Customs. **[TD 79–160.]**

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extension should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited. **[TD 84–18.]**

PART 171—FINES, PENALTIES, AND FORFEITURES

Sec.
171.0 Scope.

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Appendix A—Guidelines for Disposition of Violations of 19 U.S.C. 1497

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Appendix C—Guidelines for the Imposition of Penalties for Violations of 19 U.S.C. 1641

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of Subpart C also issued under 22 U.S.C. 401, 46 U.S.C., 320, unless otherwise noted.

Source: T.D. 70-249, 35 FR 18265, Dec. 1, 1970, unless otherwise noted.

§ 171.0 Scope.

This part contains provisions relating to filing of petitions and action upon petitions for relief from fines, penalties, and forfeitures incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. **[TD 70-249.]**

Subpart A—General Provisions

§ 171.1 Reserved [TD 84-18.]

§ 171.2 Reserved [TD 84-18.]

Subpart B—Application for Relief

§ 171.11 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Commissioner of Customs.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney at law, or a Customs broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation. **[TDs 72-107, 73-141.]**

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved;

(2) The date and place of the violation or seizure; and

(3) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation.

(d) *Petition for relief from forfeiture.* When the petition is for relief from a forfeiture, it shall show the interest of the petitioner in the property and in appropriate cases shall be supported by bills of sale, contracts, mortgages, or other satisfactory evidence. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun. **[TD 79-160.]**

(e) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.12 Filing of petition.

(a) *Where filed.* A petition for relief shall be filed with the district director for the district in which the property was seized or the fine or penalty imposed.

(b) *When filed.* Unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Number of copies.* The petition shall be filed in triplicate.

(d) *Petitions for remission or mitigation of monetary penalty.* Petitions for remission or mitigation of a monetary penalty assessed under the provisions of Part 111, Subpart E, shall be filed within 30 days of the date of mailing of the notice.

(e) *Exception for certain cases.* If a penalty is assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period of time shorter than 30 days but not less than 7 days, for the filing of a petition for relief. **[TDs 84-60, 84-210, 85-123, 85-195, 86-161.]**

§ 171.13 Additional evidence required with certain petitions.

(a) *Seized property in possession of another responsible for act.* If the seized property was in the possession of another who was responsible for or caused the act which resulted in the seizure, the petitioner shall present the following evidence, as applicable:

(1) Evidence as to the manner in which the property came into the possession of such other person;

(2) Evidence that before parting with the property the petitioner did not know, or have reasonable cause to believe, that the property would be used to violate customs laws or other laws of the U.S.;

(3) Evidence that the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime; and

(4) Evidence that, with respect to a seized transporting conveyance, the petitioner took reasonable steps to prevent the conveyance from being used in violation of the customs laws or other laws of the U.S.

(b) *Petitioner holding chattel mortgage or conditional sales contract.* A petitioner holding a chattel mortgage or conditional sales contract covering the seized property shall submit with his petition evidence showing that:

(1) He has an interest in such property, as owner or otherwise, which he acquired in good faith;

(2) He had at no time any knowledge or reason to believe that the property was being or would be used in violation of the customs laws or other laws of the U.S.; and

(3) He had at no time any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

(c) *Long-term lease agreements.* A lessor who leases property on a long-term basis with the right to sublease shall submit with his petition evidence in accordance with paragraph (b) of this section.

(d) *Voluntary bailments.* A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall submit with his petition evidence in accordance with paragraph (b) of this section. Property belonging to one family member which is seized from another is property subject to a voluntary bailment within the meaning of this subsection.

(e) *Straw purchase transactions.* If a person purchases in his own name property for another who has a criminal record or general reputation for commercial crime, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, the lienholder shall submit with his petition evidence in accordance with paragraph (b) of this section as to both the purchaser of record and the real purchaser.

(f) *Evidence to be considered in determining extent of mitigation with respect to transporting conveyances.* Listed below are some examples of the types of evidence that will be considered in determining whether the petitioner is entitled to relief from the forfeiture of a seized transporting conveyance. This list is not all-inclusive; Customs officers may consider other similar types of evidence in making their determination.

(1) Whether the petitioner asked the person taking possession of the property whether he had a criminal record;

(2) Whether the petitioner asked for and was provided with business or financial references;

(3) Whether the petitioner asked for and was provided with personal references;

(4) Whether the petitioner contacted the references to confirm the reliability and good reputation of such person;

(5) Whether an argeement was reached between the petitioner and the person taking possession that the property would be used only in accordance with law; and

(6) Whether the petitioner contacted Federal, State or local law enforcement authorities as to the criminal record or reputation of the person taking possession. Information from a Federal law enforcement agency may require a waiver of the Privacy Act from the person who is the subject of the request.

(g) *Denial of relief.* The failure to furnish adequate evidence as required by this section may be a basis for denial of relief. Relief may also be denied to a petitioner who has met the applicable criteria, but with respect to whom remission would be inimical to the interests of justice. **[TD 84-92.]**

§ 171.14 Oral presentations seeking relief.

(a) *For certain violations.*—(1) *Right to make oral presentation.* If the penalty incurred is for a violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under §171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition. **[TDs 79-160, 79-305.]**

§ 171.15 Extensions of time for filing petition.

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a district director may extend the time for filing a petition (or establish a 60-day response period pursuant to subparagraph (4) below) or supplemental petition, upon the request of a person who is or may be liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

(1) The person is incapacitated and unable to prepare or to assist in the preparation of a petition.

(2) The person is absent from the U.S. for 20 days or more during the specified period for filing the petition for relief.

(3) Evidence necessary to file an effective petition is not immediately available. Evidence is not immediately available if, for example, it:

(i) Is in the possession of a foreign source and must be procured from same.

(ii) Requires that a request of any Government agency be complied with, provided that any such request is not frivolous and is made in accordance with law.

(4) The case involves a complex legal or factual problem. Examples of the type of problem are the need to examine voluminous records (e.g., Customs entries, purchase orders, invoices and the like) to learn the facts on which to

base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations. In such cases, the district director, on his own initiative, may specify in the violation/penalty notice that a 60-day response period from the date of the mailing of the notice is warranted. If, in such cases, the district director concludes that only a 30-day response period is warranted and so indicates in the violation/penalty notice, the person charged with responding shall have 7 days from the date of the mailing of the notice to appeal the decision of the district director to the Director, Entry Procedures and Penalties Division, Customs Headquarters. If an appeal is taken, a copy of the appeal must be furnished to the district director who issued the notice, and the original forwarded to the Director, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229. Such appeals should clearly set forth the reasons why the particular case warrants an extension beyond the 30-day period. If the appeal is granted, the Director, Entry Procedures and Penalties Division, will notify both the district director and the person charged with responding of the time period allotted for response. In no case will the filing of an appeal under this paragraph toll the 30-day period of time specified by the district director in the violation/penalty notice.

(5) There is an occurrence of some act of God which makes compliance with petitioning time limits impossible.

(6) In any seizure case involved or related to controlled substances, no extensions of time to respond shall be granted absent a demonstration of extraordinary circumstances justifying additional time beyond the 30-day period.

(7) Any other situation in which the district director determines that an extension of time for filing a petition is justified.

(b) *Retention of new counsel insufficient reason to grant extension.* As a general rule, the mere fact that counsel has just been retained, or new counsel appointed or selected, without another enumerated reason, will be insufficient reason to grant an extension of petitioning time. **[TD 85-195.]**

Subpart C—Action on Petitions

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by Customs, with the exception of penalties or forfeitures incurred under the provisions of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $100,000. The district director may mitigate or remit fines, penalties, or forfeitures incurred under 19 U.S.C. 1592 when the total amount of those fines, penalties or forfeitures does not exceed $25,000. **[TDs 73-308, 85-25.]**

§ 171.22 Special cases acted upon by district director.

(a) *Merchandise illegally transported coastwise.* A forfeiture of merchandise or a claim for forfeiture of a monetary amount under title 48, United States Code, § 883, for illegally transporting merchandise coastwise, may be remitted by the district director, regardless of the value of the merchandise or the amount of the penalty, if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress. **[TD 79-160.]**

(b) *Forfeiture of imported liquor or compound.* When any package of or package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, or any vessel or vehicle in which the same has been transported has become subject to forfeiture under the provisions of 18 U.S.C. 3615, for noncompliance with 18 U.S.C. 1263, and the U.S. attorney has advised the district director that there is not sufficient evidence of intent to violate the law to warrant criminal prosecution thereunder, the forfeiture incurred shall be remitted pursuant to the authority of § 7327, Internal Revenue Code of 1954 (26 U.S.C. 7327), and § 618, Tariff Act of 1930 (19 U.S.C. 1618), upon the condition that the expenses of seizure, if any, shall be paid.

(c) *Claim for property stolen in Canada and seized by U.S. Customs.* Under the provisions of Executive Order 4306, dated September 19, 1925 (T.D. 41110), any person claiming to be the owner of property stolen in Canada, brought into the U.S. and seized by Customs authorities for violation of law, may file with the district director having custody of the property a petition for its release, addressed to the Secretary of the Treasury. The petition shall be supported by evidence of ownership in the claimant and shall contain a waiver and release of all possible claims against the U.S. or any officer thereof for compensation or damages incident to the seizure and detention of the property. If the district director is satisfied that the claimant is the owner of the property and that it was brought into the U.S. without collusion on the part of the claimant, the district director may release the property for return to Canada upon the payment of all expenses incident to its seizure and detention. In the event of conflicting claims for the property or any doubt as to the claimant's interest in or right to the property, the district director shall submit the matter to the Commissioner of Customs for decision.

§ 171.23 Availability of mitigation guidelines for monetary penalties assessed pursuant to § 592, Tariff Act of 1930, as amended.

The guidelines used by the Customs Service for the mitigation of claims for monetary penalties assessed pursuant to § 592, Tariff Act of 1930, as amended, are available upon written request to the Commissioner of Customs, Attention: Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. **[TD 80-160.]**

§ 171.24 Limitations on consideration of petitions.

(a) *Case referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice. **[TD 75-21.]**

(b) *Vessel or vehicle awarded for official use.* When a vessel or vehicle is awarded for official use, a petition shall not be considered unless:

(1) It is filed before final disposition of the property is made; or

(2) It is a petition for restoration of proceeds of sale filed in accordance with Subpart E of this part. **[TD 84-18.]**

Subpart D—Disposition of Petitions

§ 171.31 Act or omission did not occur.

If it is definitely determined that the act or omission forming the basis of a penalty or forfeiture claim did not in fact occur, the claim shall be canceled by the district director. When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be canceled without the approval of the Commissioner of Customs unless there is in force a ruling by the Commissioner of Customs decisive of the issue.

§ 171.31a Written decision.

If a petition or supplemental petition (see § 171.33) for relief relates to a violation of § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based. Decisions on initial or supplemental petitions which are considered to be precedential in nature or otherwise significant will be published in the weekly ***Customs Bulletin*** with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. For purposes of this section, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty. **[TD 79-160.]**

§ 171.32 Limitation on time decision effective.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full penalty or claim of forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the U.S. attorney unless other action has been directed by the Commissioner of Customs. **[TD 79-160.]**

§ 171.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the petitioner is not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief is requested as the effective period of the decision. **[TD 85-195.]**

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has the authority to grant relief in accordance with the provisions of §§ 171.21 and 171.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $25,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $25,000 but does not exceed $100,000, for reconsideration and disposition of the case, except as provided in § 171.22(c). **[TDs 73-308, 75-36, 84-18, 85-25.]**

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the district director who initiated the case for transmittal to the Commissioner of Customs for reconsideration. **[TD 75-36.]**

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case. For the purpose of this section, the term "second supplemental petition" shall include an offer in compromise under 19 U.S.C. 1617 made prior to the commencement of a civil action to enforce the penalty claim.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision with respect to the entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted. **[TD 85-195.]**

(d) *Appeals to the Secretary of the Treasury.* A petitioner filing a supplemental petition pursuant to this section from a decision of the Commissioner of Customs with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed; in such a case, if the supplemental petition is an initial supplemental petition or a second supplemental petition eligible for consideration under paragraph (c) of this section, a decision thereon will be issued by Customs. **[TD 84-18.]**

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of Subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under § 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of Subpart B of this part, the petition for restoration of proceeds of sale under § 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property, supported in appropriate cases by bills of sale, contracts, mortgages, or other satisfactory documentary evidence. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property the subject of a claim under § 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of § 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contribution in general average that may have been filed. (Secs. 305, 306, 49 Stat. 880; 40 U.S.C. 304j, 304k). **[TD 87-7.]**

Appendix A to Part 171—Guidelines for Disposition of Violations of 19 U.S.C. 1497

Liabilities incurred under § 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also Part 148, Customs Regulations):

I. *Violations Involving Dutiable Articles.* For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense.* For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. *Mitigating Factors.* When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors.* When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. *Commercial Articles.* When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor.*

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors.*

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Chapters 1-97, HTSUS; (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§ 10.171-10.178, Customs Regulations) or Chapter 98, HTSUS, the following rules apply:

1. *Mitigated Penalty for First Offense.*

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Chapter 98, HTSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. *Mitigating Factors.* When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors.*

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. *Commercial Merchandise.*

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under § II.3. of these guidelines.

III. *Other Applicable Rules.*

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Chapters 1–97, HTSUS, and not the flat rate from Chapter 98, HTSUS.

5. "Duty" means Customs duties and any internal revenue taxes which would have attached upon importation (see § 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the U.S. articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in § I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The district director or area director should contact the Regional Counsel of Customs to determine the best course of action to follow with respect to the civil liability. Regional Counsel will consult with the U.S. attorney and the Miscellaneous Penalties Branch at Customs Headquarters. Because of time delay problems, all *seizures* involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S. attorney for the institution of a judicial proceeding. **[TDs 83–145, 89–1.]**

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592

A monetary penalty incurred under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as § 592) may be remitted or mitigated under § 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under § 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in prepenalty proceedings and in determining the monetary penalty assessed in the penalty notice. The assessed or mitigated penalty amount determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1592(e).

(A) Violations of Section 592: Materiality

Without regard to whether the U.S. is or may be deprived of all or a portion of any lawful duty thereby, a violation of § 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the U.S. by means of any document, written or oral statement, or act which is material and false, or any omission which is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. A document, statement, act, or omission is material if it has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty, or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or a similar statute, or an unfair act involving patent or copyright infringement. There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct.

(B) Degrees of Culpability

There are three degrees of culpability under § 592: negligence, gross negligence, and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for the offender's obligations under the statute, but without intent to defraud the revenue or violate the laws of the U.S.

(3) *Fraud.* A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the U.S., as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Pre-Penalty Notice.* (a) As provided in § 162.77, Customs Regulations (19 CFR 162.77), if the district director has reasonable cause to believe that a violation of § 592 has occurred and determines that further proceedings are warranted, he shall issue to each person concerned a notice of his intent to issue a claim for a monetary penalty. In issuing such pre-penalty notice, the district director shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice is not required if the violation involves a non-commercial importation or if the proposed claim does not exceed $1,000.

(b) If the violation is determined to be the result of fraud, the proposed claim shall be equal to the domestic value of the merchandise. In cases involving gross negligence and negligence, in determining the amount of the proposed claim, the district director shall take into account the gravity of the offense, the amount of loss of revenue, the extent of wrongdoing, mitigating, aggravating and extraordinary factors, and other factors bearing upon the seriousness of the violation, but in no case shall the assessed penalty exceed the statutory ceilings prescribed in § 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraph (D) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of revenue and quota evasions. To be serious, a violation need not result in a loss of revenue. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) Violations where the loss of revenue is nonexistent or minimal and which have an insignificant impact on enforcement of the laws of the U.S. may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect, i.e., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements which do not change the admissibility or entry status of merchandise, its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. This category also includes violations in which the falsity or omission is revelant only to the assessment of duties, but in which it is finally determined that the falsity or omission did not result in any loss of duties, i.e., failure to report commissions paid which are ultimately determined to be non-dutiable; or a false statement as to the relationship of the parties if the fact of the relationship is determined not to affect appraisement. In order for there to be a violation of § 592, the falsity or omission must be material, as defined in paragraph (A) of these guidelines. Generally, a penalty in a fixed amount ranging from $100 to $500 would be appropriate in cases where there are no prior violations of the same kind. Fixed sums ranging from $500 to $10,000 may be appropriate, however, in the case of multiple or repeated violations. Fixed sum penalty amounts may not exceed the maximum amounts stated in § 592 and in these guidelines.

(d) In determining the amount of the proposed penalty, the district director shall also take into account any mitigating, aggravating, or extraordinary factors that are clearly established by the evidence available at the time.

(2) *Issuance of Penalty Notice.* (a) Following issuance of the pre-penalty notice, and in consideration whether or not to issue a penalty notice pursuant to § 162.79, Customs Regulations (19 CFR 162.79), and if so, in what amount, the district director shall give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by the alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating, or extraordinary factors. In all cases involving fraud, the penalty notice shall be in the amount of the domestic value of the merchandise. In general, the degree of culpability stated in a pre-penalty notice shall not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the evidence, the district director determines that a higher degree of culpability exists, the pre-penalty notice should be cancelled and a new pre-penalty notice issued indicating the higher degree of culpability and increased penalty amount proposed, with supporting evidence reflected therein. If, however, less than 3 months remain before expiration of the statute of limitations, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty. Alternatively, the district director shall consider whether a lower degree of culpability is warranted by the evidence. The penalty notice shall contain other changes in the information provided in the pre-penalty notice.

(b) No penalty case shall be initiated for revenue-loss violation, if the district director is certain that the violation has resulted from negligence, the combined actual and potential loss of revenue from entries within that district is $500 or less, and the circumstances make it certain it is a violation which does not extend to other districts. In cases in which the loss of revenue is between $500 and $1,000, the district director may initiate a penalty case if, in his consideration of all the circumstances, the claim for monetary penalty is warranted as a deterrent for future violations. Any actual loss of revenue shall be collected pursuant to § 162.79b, Customs Regulations (19 CFR 162.79b).

(c) No penalty case shall be initiated for a violation involving gross negligence or negligence where a prior disclosure has been made and there is no actual loss of revenue, or where the actual loss of revenue has been tendered to Customs and the interest thereon is less than $500.

(D) Disposition of Cases

(1) *In General.* In mitigating claims for monetary penalty, the district director or appropriate customs official shall consider all the information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors in determining the final assessed penalty. All factors used by the district director or appropriate customs official in determining the penalty should be stated in this decision. If a penalty in a fixed amount is deemed not to be appropriate (see (C)(1)(c)), disposition in revenue-loss and non-revenue-loss cases shall proceed in the manner set forth below.

(2) *Violations Determined to be Fraudulent.* Absent extraordinary factors justifying further relief, a penalty for a fraudulent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of five times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or eight times the loss of revenue. However, a penalty equal to the greater of the domestic value of the merchandise or eight times the loss of revenue may be warranted due to the existence of aggravating factors.

(b) For non-revenue-loss violations, to an amount ranging from 50 to 80 percent of the dutiable value of the merchandise. However, a penalty equal to the domestic value of the merchandise may be warranted due to the existence of aggravating factors.

(3) *Violations Determined to be Grossly Negligent.* Absent extraordinary factors justifying further relief, a penalty for a grossly negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of two and one-half times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or four times the loss of revenue;

(b) For non-revenue-loss violations, to an amount ranging from 25 to 40 percent of the dutiable value of merchandise.

(4) *Violations Determined to be Negligent.* Absent extraordinary factors justifying further relief, a penalty for a negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of one-half the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or two times the loss of revenue.

(b) For non-revenue-lost violations, to an amount ranging from five to 20 percent of the dutiable value of the merchandise.

(5) *Cancellation of Claim.* The district director shall cancel a claim for monetary penalty whenever it is determined that an essential element of the violation has not been established by the available evidence.

(6) *Remission of Claim.* If, following consultation with the regional counsel, the district director determines by clear and convincing evidence that the statute of limitations would be available as a defense to enforcement of a claim for monetary penalty, then the district director shall remit such claim, if it is within his authority as provided in § 171.21, Customs Regulations (19 CFR 171.21). Any such case not within the district director's authority should be referred to the Commercial Fraud and Negligence Penalties Branch at Customs Headquarters. If the district director believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, he shall first obtain approval from the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters, Customs Service.

(E) Prior Disclosure; Disposition of Cases

(1) In non-revenue-loss cases and potential-revenue loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty is to be remitted in full.

(2) In non-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to ten percent of the dutiable value of the merchandise. There shall be no further mitigation in the absence of extraordinary factors.

(3) In actual-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty shall be equal to the interest computed from the date of liquidation on the amount of the actual loss of revenue resulting from the violation.

(4) In revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to 100 percent of the total actual and potential loss of revenue resulting from the violation. There shall be no further mitigation in the absence of extraordinary factors.

(F) Mitigating Factors

The following factors shall be considered in mitigation of the penalty, provided that sufficient evidence establishes their existence. The list is not exclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official only if it appears that the violator reasonably relied upon the information. If the claimed erroneous advice was not given in writing, the violator has the burden of establishing this claim by a preponderance of the evidence. The concepts of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the penalty is to be cancelled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* In order to obtain the benefits of this factor, the violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator, and assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator may not be considered cooperation justifying mitigation.

(3) *Immediate Remedial Action.* This factor includes the payment of the actual loss of duties prior to the issuance of a penalty notice and within 30 days of the determination of the duties owed. In certain extreme circumstances, this factor may include the removal of an offending employee. The correction of organizational or procedural defects will not be considered a mitigating factor. It is expected that any importer or other involved individual will seek to remove or change any condition which contributed to the existence of a violation.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* For the violator to benefit from this factor, the violation must have occurred as a result of negligence or gross negligence, and the violator must be able to show a consistent pattern of importations without violation of § 592, or any other statute prohibiting false or fraudulent importation practices.

(G) Aggravating Factors

Certain factors may be determined to be aggravating factors in arriving at the final mitigated penalty decision. Examples of aggravating factors include obstructing the investigation, withholding evidence, providing misleading information concerning the violation, and prior substantive violations of § 592 for which a final administrative finding of culpability has been made.

(H) Extraordinary Factors Justifying Further Relief

(1) The four factors specified below may be considered in connection with further relief. Such relief may be accorded for extraordinary factors not specified below only upon the concurrence of the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters.

(a) *Inability to obtain jurisdiction over the violator or inability to enforce a judgement against the violator.*

(b) *Inability to Pay the Mitigated Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, i.e., copies of income tax returns, current financial statements, and independent audit reports.

(c) *Extraordinary Expenses.* This factor may include such expenses as those incurred in providing one-time computer runs solely for submission to Customs to aid it in analyzing a case involving an unusual number of entries, with each entry involving several factors, i.e., violations involving subheading 9802.00.80, HTSUS. Usual accounting and legal expenses (both general and Customs), or the cost incurred in instituting remedial action would not be considered extraordinary expenses.

(d) *Customs Knowledge.* Additional relief in non-fraud cases will be granted if it is determined that Customs had actual knowledge of a violation and failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of revenue in revenue-loss cases or five percent of dutiable value in non-revenue-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of revenue in revenue-loss cases or two percent of dutiable value in non-revenue-loss cases if the violations were the result of negligence. This factor shall not be applicable when a substantial delay in the investigation is attributable to the violator.

(I) Customs Brokers

A Customs broker shall be subject to the above guidelines only if he is determined to have (1) committed a fraudulent violation; or (2) committed a grossly negligent or negligent violation and shared in the financial benefits of the violation to an extent over and above the prevailing brokerage fees.

If the broker committed a grossly negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum which should not exceed $500.

If the broker committed a negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum not to exceed $250. A broker is not negligent if he acts with reasonable care (as measured by the prevailing standards of the profession) in the preparation and presentation of the entry or the entry summary, and reasonably relies on the information or documents supplied to him by the actual owner, consignee, shipper, or their agent.

(J) Arriving Travelers

(1) *Liability.* Assessment of penalties and determination of degrees of culpability for violations by an arriving traveler must be determined in accordance with the above guidelines.

(2) *Limitations on Liability.* (a) In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of a first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited: (1) In the case of revenue-loss violations, to an amount ranging from a minimum of three times the loss of revenue to a maximum of five times the loss of revenue, provided the loss of revenue is also paid; (2) in the case of non-revenue-loss violations, to an amount ranging from a minimum of 30 percent of the dutiable value to a maximum of 50 percent of the dutiable value.

(b) With respect to revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of revenue is $100 or less, and there are no other concurrent or prior violations of § 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected. With respect to non-revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of § 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(K) Violations of Laws Administered by Other Federal Agencies

Violations of laws administered by other federal agencies (such as Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines. **[TDs 84–18, 89–1.]**

Appendix C to Part 171, Customs Regulations—Guidelines for the Imposition of Penalties for Violations of 19 U.S.C. 1641

The Trade and Tariff Act of 1984 promulgated numerous changes to the current statute relating to customs brokers. Pursuant to the revised section 19 U.S.C. 1641, monetary penalties may be assessed against brokers or parties acting as brokers. The language of the new statute does not enumerate specific penalty amounts to be assessed for various transgressions. The following document attempts to define that conduct which is to be proscribed and to suggest penalty amounts to be assessed for such violations.

It should be noted that penalties for a violation or violations of the statute are limited to amounts not to exceed $30,000. EXCEPTION: Penalties incurred under section 1641(b)(6) are limited to $10,000 for each violation. Aggregate penalties under this section are limited to $30,000.

Note.—Unless otherwise noted, the assessment of penalties is an alternative sanction to revocation or suspension of the broker's license. The imposition of these penalties is always done at the discretion of the district director.

Section 1641(b)(6)—Conducting customs business without a license.

A. Customs business, as defined in subsection 1641(a), includes all transactions relating to entry and admissibility of merchandise including classification and valuation and the payment of duties, taxes or other charges assessed or collected by Customs. It also includes transactions relating to refund, rebate or drawback. Customs business does not relate to those transactions relating solely to the exportation or transportation of goods.

B. This section provides for a monetary penalty not to exceed $10,000 to be imposed against "Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection . . . ". Separate penalties, each not exceeding $10,000 to a maximum aggregate of $30,000, may be imposed for each transaction occurring in violation of this provision. The $10,000 penalty also may be imposed for each violation of any other provision of section 1641.

C. Penalty amounts to be imposed for transacting customs business without a license are as follows:

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection "family member" is defined as a parent, child, spouse, sibling, grandparent, or grandchild.

2. No penalty action when *all* of the following are evident:

a. First violation
b. One time transaction
c. Non-commercial in nature (goods for personal use of another person other than a family member—not for resale)
d. Violator not remunerated for his action

Note.—A letter of warning should be issued indicating that further like conduct will result in penalty action

3. $250 penalty for:

a. Each repeat violation made under conditions listed above under subsection (2), or
b. First violation when transaction is non-commercial in nature but is conducted on behalf of any business entity (including associations, corporations and partnerships), for example:

i. an importation of office supplies made on behalf of a business entity is a non-commercial importation that would fall under this category of violation because the supplies would be used by business entity and are not for resale
ii. an importation of raw material or parts of merchandise that is to be manufactured, refined, or assembled here before resale would not be a non-commercial entry because the merchandise eventually will be resold, albeit in another form than that which it was entered

c. First violation where the importation is commercial in nature (i.e., imported merchandise is for resale), *or* where the violator is compensated for his action

4. $1,000 penalty for each repeat violation involving:

a. Commercial importation
b. Non-commercial importation made on behalf of a business entity
c. Non-commercial importation for which compensation is received by the violator

5. $10,000 penalty when:

a. Violator falsely holds himself out as being a licensed customs broker
b. A continuing course of conduct can be shown (determined by frequency of violations and/or number of entries involved) which would indicate that the violator is entering merchandise for others on a regular commercial basis

e.g., if the violator has incurred numerous penalties under subsections (2) and (3) above, but the smaller penalties have had no deterrent effect, the $10,000 penalty under this subsection should be assessed in an action separate from those smaller penalties

D. Important: As a general rule, a separate penalty should not be imposed for each unlawful Customs business transaction if numerous transactions occur contemporaneously. For example:

1. If an unlicensed individual files six commercial entries at one time, that should be treated as one violation. It should not be treated as six violations because the entries were presented contemporaneously.

2. However, if evidence exists to indicate that an unlicensed individual is filing numerous entries or is conducting numerous contemporaneous transactions so as to avoid multiple penalties, then the deciding official may, at his discretion, choose to impose multiple penalties.

3. If Customs discovers that an individual has conducted Customs business without a license on numerous occasions, but such individual acted without knowledge of the prohibition on such conduct, those numerous transactions should be treated as one violation for purposes of imposition of any penalty.

E. In no case involving a first violation should mitigation from the imposition of the penalty be granted, unless extraordinary mitigating circumstances can be shown.

F. Mitigation may be granted from penalties arising from a second or subsequent violation. For example, a significant lapse of time between violations would be considered a mitigating factor in the disposition of such penalties.

G. Intent to violate the law is not an element of this violation. Reference to "intentionally transacts customs business" in subsection 1641(b)(6) relates to the intentional transaction of the business itself, not to any intentional attempt to violate the terms of the statute.

Section 1641(d)(1)(A)—Making a false or misleading statement or an omission as to material fact in any application for a license or a permit.

A. If the license would not have been issued but for the false statement, the proper sanction would be suspension or revocation of the license. If the false or misleading statement would not have absolutely resulted in the denial, revocation or suspension of a license, then penalty sanctions are proper.

B. Material facts include but are not limited to:

1. Facts as to identity.
2. Facts as to citizenship status of an individual.
3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.
4. The organization of any corporation, association, or partnership.
5. The status of the license of a license holder who is a corporate officer or partner.

C. $5,000 penalty for each false statement.

D. Mitigation may be granted in these cases.

Section 1641(d)(1)(B)—Conviction of a broker of certain felonies or misdemeanors subsequent to filing an application for a license.

A. As a general rule, license revocation is the standard sanction for these violations. If monetary penalties are assessed, the following criteria should be used.

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.
2. Conduct of customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).
3. For example, relevant convictions would be:

a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction
b. 18 U.S.C. 545—unlawful importation of merchandise
c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission
d. 22 U.S.C. 2778—illegal exportation of munitions

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii). Either suspension or revocation is the appropriate penalty for these infractions.

D. $15,000 penalty for each misdemeanor conviction.

E. $30,000 penalty for each felony conviction.

F. Any sanction to be imposed under this subsection must be approved by Headquarters.

Section 1641(d)(1)(C)—Violation of any law enforced by the Customs Service or the rules or regulations issued under any such provision.

A. As a general rule, no penalty will be issued under this subsection when a personal penalty (*not* a claim for liquidated damages) against the violator is provided for by the other law being enforced by Customs.

Exception: If the violation of the other law enforced by Customs is intentional in nature, then penalties may be assessed under this subsection in addition to any sanctions provided by that other law.

e.g., a broker intentionally falsifies entry documents and presents them to Customs. He is found to have committed an intentional fraudulent violation under 19 U.S.C. 1592. He shall be liable for sanctions under this subsection in addition to any 1592 penalties. Had the 1592 violation been found to have resulted because of gross negligence or negligence, penalties pursuant to this subsection should not be imposed.

B. A penalty shall be imposed in situations where the other law violated only moves against property or the violator has demonstrated a continuing course of illegal conduct or evidence exists which indicates repeated violations of other statutes or regulations.

C. If the other law violated moves only against property, the violator shall incur a monetary penalty equal to the domestic value of such property or $30,000, whichever is less.

e.g., violations of 22 U.S.C. 401 for unlawful exportation of merchandise result in seizure and forfeiture of the violative merchandise. There are no penalty provisions which Customs enforces against parties responsible for the seizable offense. If brokers are recalcitrant and are constantly responsible for offenses which result in seizure of merchandise, a penalty equal to the domestic value of such merchandise (in no case to exceed $30,000) should be imposed.

D. If the evidence supports the finding of repeated statutory or regulatory violations or the intentional violation of any statute or regulation, penalties in addition to those provided for by the statute or regulation violated should be imposed as follows:

1. First violation involving a finding of a pattern of violations or a finding of an intentional violation—$1,000.
2. Second violation—$5,000 penalty.
3. Third and subsequent violations—$10,000.

E. Mitigation based on negligence standards is appropriate in these types of cases.

F. Examples of violations for which penalties described under subpart D are appropriate.

1. A broker continually submits incomplete entry summaries resulting in a high rejection rate. He incurs numerous claims for liquidated damages for late filing of entry summaries. Rather than revoke his ID privileges and place him on a cash only basis, the option is available to assess monetary penalties pursuant to this section for his continuing course of conduct in violating the Customs Regulations.

2. A broker consistently files entries claiming duty free entry of merchandise under GSP. He does not submit Forms A at the time of filing of the entry summary, relying on his bond assuring production of missing documents. The broker continually fails to submit the forms, resulting in liquidation of the entries as dutiable. Significant delay occurs between the filing of the original entry, payment of duties and liquidation. This consistent failure to comply with the Regulations with regard to filing of missing documents would warrant imposition of penalties under this subsection.

Section 1641(d)(1)(D)—Counseling, commanding, inducing, procuring or knowingly aiding and abetting violations by any other person of any law enforced by the Customs Service.

A. If the law violated by another moves only against property, a monetary penalty equal to the domestic value of such property or $30,000, whichever is less, may be imposed against the broker who counsels, commands, aids or abets such violation.

B. If the law violated provides for only a personal penalty against the actual violator, a penalty may be imposed against the broker in an amount equal to that assessed against the violator, but in no case can the penalty exceed $30,000.

C. All penalties assessed under this subsection may be imposed in addition to any penalties that may be assessed against the broker under the provisions of title 19, United States Code, section 1595a(b).

D. Examples of violations of this subsection:

1. A broker counsels a client that certain gemstones are absolutely free of duty and need not be declared upon entry into the United States. The client arrives in the United States and fails to declare a quantity of gemstones worth $45,000. A penalty of $30,000 may be imposed against the broker for such counseling. The client would incur a personal penalty of $45,000 under the provisions of title 19, United States Code, section 1497, but the penalty against the broker cannot exceed $30,000.

2. A client imports $15,000 worth of merchandise by vessel. The merchandise is unladen at the wharf but Customs has not appraised or released it. The broker informs the client that the merchandise can be moved and delivered to the consignee. The broker assures his client that he will handle all the necessary paperwork. The merchandise is moved from the wharf. The broker is subject to a $15,000 penalty for counseling and inducing his client to violate the provisions of title 19, United States Code, section 1448.

E. All penalties imposed under this subsection are subject to mitigation.

Section 1641(d)(1)(E)—Knowingly employing or continuing to employ any person who has been convicted of a felony, without written approval of such employment from the Secretary of the Treasury.

Ordinarily revocation or suspension of the license would be the appropriate remedy for this violation. Should such sanctions not be pursued then the following penalties should be assessed:

A. $25,000 penalty for knowingly employing any convicted felon without seeking approval for employment.

B. $30,000 penalty for knowingly employing any convicted felon and continuing to employ same after approval has been denied.

C. $5,000 penalty for knowingly employing any convicted felon and failing to make application with the Secretary approving such employment within 30 days of the date of discovery of the felony conviction.

D. Example: If a broker unknowingly employs a convicted felon and 1 year after employment discovers the existence of such a conviction, the following actions would dictate imposition of penalties:

1. He has 30 days to seek approval of the Secretary for such employment. If he seeks the approval within such time, no penalty action would lie.

2. If he seeks approval at some time after 30 days from the date of discovery, a $5,000 penalty would lie.

3. If he does not seek approval until after Customs becomes aware of the violation, a $25,000 penalty would lie.

4. If he seeks approval but is denied, and continues to employ the convicted felon, a $30,000 penalty would lie.

E. Mitigation will only be permitted from the $5,000 penalty.

F. The age of the conviction will not be a factor which would obviate the imposition of any penalty. It will be a factor when considering the grant of approval of employment that would be made by the Secretary.

G. Violation of this section will be *prima facie* evidence of a violation of section 1641(b)(4) relating to responsible supervision of customs business.

Section 1641(d)(1)(F)—In the course of customs business, with intent to defraud, knowingly deceiving, misleading or threatening any client or prospective client.

Ordinarily, revocation or suspension of the license would be the appropriate remedy for this violation. Should such sanctions not be pursued then the following guidelines with regard to assessment of penalties should be followed:

A. An unsubstantiated accusation by a client is inadequate reason to assess any penalty under this section.

B. A $30,000 penalty should be imposed for any violation of this subsection.

C. Inasmuch as evidence of intent must be shown before a penalty can be imposed, no mitigation should be permitted if a violation is found to lie. A petition for mitigation could be entertained only on the issue of whether such violation did, in fact, occur.

Section 1641(b)(5)—The failure of a customs broker that is licensed as a corporation, association or partnership to have, for any continuous period of 120 days, at least one officer of the corporation or association or one member of the partnership validly licensed.

A. Important: Violation of this section results in the revocation of the broker's license by operation of law.

B. A penalty of $10,000 pursuant to section 1641(b)(6) should be imposed because the revocation by operation of law results in the broker conducting Customs business without a license. No penalty liability would be incurred specifically under section 1641(b)(5).

Section 1641(c)(3)—Failure of a customs broker granted a permit to conduct business in a certain district to employ, for a continuous period of 180 days, at least one individual who is licensed within the district or region.

A. Important: Violation of this section results in the revocation of the permit by operation of law.

B. The same parameters should be followed for imposition of penalties under this section as those established under section 1641(b)(5).

C. Important: The new law as it pertains to permits (sections 1641(c)(1)(B) and 1641(c)(2)) does not take effect until October 12, 1987. Penalties or sanctions for violation of this section can only be issued if the violation occurs subsequent to that effective date.

Section 1641(b)(4)—Failure of a licensed broker to exercise responsible suspervision and control over the business it conducts.

A. Standards of responsible supervision and control shall be issued by Commissioner of Customs. Regulatory authority to set such standards is provided by new section 1641(f).

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at a district level:

1. A penalty of $1,000 against any broker employing an individual who violates any provision of section 1641. Such violation shall be *prima facie* evidence of a failure to exercise responsible control.

2. A penalty of $5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business.

3. A penalty of $5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation for which he is licensed to do business. Failure to have such working knowlege shall be *prima facie* evidence of a lack of responsible supervision and control. Such working knowledge must include:

a. A working knowledge of all automated systems in use in the district including ABI, where applicable
b. A knowledge of the cash flow procedures in each district of operation
c. Retention of all surety bonds in the proper form and in sufficient dollar amounts
d. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds
e. Knowledge of backgrounds and performance of all employed personnel in the region (failure to perform this function could result in penalties assessed under 1641(d)(1)(E))
f. Knowledge of filing systems and document record storage in each district
g. Knowledge of any other ancillary operation of which the district director has reason to inquire

4. A penalty of $10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. Penalties issued in accordance with subsection (B) are subject to mitigation through use of a standard of culpability based on negligence.

D. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections.
2. A high rate of late filing liquidated damages cases.
3. A high number of missing document cases.
4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.
5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information to assist auditors.
6. Incurrence of liquidated damages claims which exceed the amount of any term bonds.
7. Evidence to indicate that timely duty refunds to clients are not made and adequate records of same are not kept.
8. Employing a licensed individual for a minimal number of days each 120 or 180-day period (see sections 1641(b)(5) and 1641(c)(3)) so as to avoid violation of the statute.

a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days per each 120-day period or 15 working days per each 180-day period
b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be *prima facie* evidence of lack of supervision

E. The provisions of new section 1641(c)(2) do not take effect until 3 years from the date of enactment of the statute. As such, no penalties imposed in accordance with the preceding subsection (D) of this outline can be assessed until that time.

Monetary penalties are not appropriate for any violation involving the mere failure to file the triennial report as required by new section 1641(g); however, failure to file such a document could result in revocation or suspension of the broker's license.

Notwithstanding any current delegation of authority, authority to impose penalties under 19 U.S.C. 1641 shall be retained by the Commissioner until formal delegation occurs. **[TD 86-161.]**

PART 172—LIQUIDATED DAMAGES

Sec.
172.0 Scope.

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Authority: 19 U.S.C. 66, 1623, 1624.

Source: T.D. 70-249, 35 FR 18267, Dec. 1, 1970, unless otherwise noted.

§ 172.0 Scope.

This part contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions. **[TD 70-249.]**

Subpart A—General Provisions

§ 172.1 Notice of liquidated damages incurred and right to petition for relief.

(a) *Notice of liquidated damages incurred.* When there is a failure to meet the conditions of any bond posted with Customs, the principal shall be notified in writing of any liability for liquidated damages incurred by him and a demand shall be made for payment. The sureties on such bond shall also be advised in writing, at the same time as the principal, of the liability for liquidated damages incurred by the principal.

(b) *Notice of right to petition for relief.* The notice shall also inform the principal and his sureties on the bond that application may be made for relief from payment of liquidated damages under § 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), or any other applicable statute authorizing the cancellation of any bond or of any bond charge that may have been made against such bond.

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1 (except for securities who are provided a separate petitioning period under § 172.12(b)), or within such additional time as may have been granted, the district director shall promptly refer the claim to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated damages are absent from the U.S. or were absent for more than 20 days during the 30-day period referred to in paragraph (a) of this section, the district director may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs. **[TDs 79-160, 87-51.]**

Subpart B—Application for Relief

§ 172.11 Petition for relief.

(a) *To whom addressed.* Petitions for relief shall be addressed to the Commissioner of Customs.

(b) *Form.* A petition for relief need not be in any particular form. Such petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation. **[TDs 72-107, 73-141.]**

§ 172.12 Filing of petition for relief.

(a) *Where filed.* A petition for relief shall be filed with the district director of Customs for the district in which the liability for liquidated damage is incurred.

(b) *When filed.*

(1) Except with respect to securities, a petition for relief shall be filed within 30 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

(2) The surety will receive notice to pay the liquidated damages if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10 days after the expiration of the principals 30-day petitioning period or as soon thereafter as possible. The surety will then have an additional 30 days from the date of this notification to file its own petition for relief. **[TD 87-51.]**

(c) *Number of copies.* The petition for relief shall be filed in triplicate.

Subpart C—Action on Petitions

§ 172.21 Petitions acted on by district director of Customs.

The district director may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is $100,000 or less. **[TDs 72-262, 73-140, 73-308, 85-25.]**

§ 172.22 Special cases acted on by district director of Customs.

(a) *Nonproduction of documents in general.* District directors are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of $25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations and special Customs and commercial invoices, not produced within the time prescribed by law or regulations or any lawful extension of such time. **[TD 75-229.]**

(b) *Nonproduction of commercial invoices.*—If a required commercial invoice is not produced (1) on the date the entry or entry summary is filed, (2) within 120 days after the date the entry or entry summary is required to be filed, or (3) if the invoice is needed for statistical purposes, within 50 days after the date the entry or entry summary is required to be filed, then unless the production is waived under the provisions of § 141.92 of this chapter, the bond charge for the production thereof may be canceled by the district director upon the payment of $25 as liquidated damages, if: **[TDs 73–175, 79–221, 85–39, 85–167.]**

(i) The party who made the entry submits an application for relief explaining in detail why the commercial invoice could not be produced within the prescribed period; and **[TD 85–39.]**

(ii) The district director of Customs is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the party making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the district director as abandoned upon the assessment and payment of duty and the bond (or, in the case of a continuous bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages. **[TD 77–27.]**

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.* (1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or under a special permit for immediate delivery, the district director shall issue a demand for liquidated damages in accordance with § 142.15 or 142.27 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the district director is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the district director may not grant relief from a demand for liquidated damages until the entry summary has been filed. **[TDs 73–175, 79–221, 84–209.]**

§ 172.23 Limitations on consideration of petitions.

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the Department of Justice for collection as provided in § 172.2. **[TD 87–51.]**

Subpart D—Disposition of Petitions

§ 172.31 Act or omission did not occur.

(a) *Definite.* If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the district director. If the liquidated damages have already been paid, they shall be refunded by the regional commissioner of Customs, and an appropriate notation shall be made on Customs Form 5955–A, if the transaction has already been recorded thereon. **[TD 74–227.]**

(b) *Dependent upon a construction of law.* When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.* Approval of the Commissioner of Customs shall be requested in all doubtful cases.

§ 172.32 Limitation on time decision effective.

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall be referred promptly to the U.S. attorney unless other action has been directed by the Commissioner of Customs. **[TD 79–160.]**

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision: or

(2) Within the time prescribed in the decision from which further relief is requested as the effective period of the decision. **[TD 87–51.]**

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has authority to grant relief in accordance with the provisions of §§ 172.21 and 172.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $50,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $50,000 but does not exceed $100,000, for reconsideration and disposition of the

case, except as provided in § 172.22(d)(3). **[TDs 73-308, 75-36, 85-25.]**

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the district director who initiated the case for transmittal to the Commissioner of Customs for reconsideration. **[TD 75-36.]**

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all liquidated damages determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted. **[TDs 84-18, 86-118, 87-51.]**

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

Sec.

173.0 Scope.
173.1 Authority to review for error.
173.2 Transactions which may be reviewed and corrected.
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173.5 Review of entry covering household for personal effects.
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Authority: R.S. 251, secs. 501, 624, 46 Stat. 730, as amended, 759; 19 U.S.C. 66, 1501, 1624.

Source: T.D. 70–181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

§ 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under § 520(c)(1), Tariff Act of 1930, as amended, the authority to review an entry of household or personal effects, and the power to reliquidate an entry on account of fraud. **[TD 70–181.]**

§ 173.1 Authority to review for error.

District directors, or in the New York Customs Region, the Regional Commissioner of Customs, have broad responsibility and authority to review transactions to ensure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer. **[TD 79–221.]**

§ 173.2 Transactions which may be reviewed and corrected.

The district director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

§ 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* The district director within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the district director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation shall be given in accordance with the requirements for giving notice of the original liquidation. (Sec. 501, 46 Stat. 730, as amended; 19 U.S.C. 1501)

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct.* Even though a valid protest was not filed, the district director, upon timely application, may correct pursuant to § 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) *Transactions which may be corrected.* Correction pursuant to § 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence: **[TD 79–221.]**

(1) Does not amount to an error in the construction of a law;

(2) Is adverse to the importer; and

(3) Is manifest from the record or established by documentary evidence.

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section shall be brought to the attention of the district director at the port of entry, or in the New York Customs Region, the Regional Commissioner of Customs, within 1 year after the date of liquidation or exaction.

(d) *"Liquidation" includes reliquidation.*—"Liquidation" when used in § 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), and in this section, includes reliquidation of an entry. **[TD 79–221.]**

173.4a Correction of clerical error prior to liquidation.

Pursuant to § 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), the district director may, prior to liquidation of an entry, take appropriate action to correct a clerical error that resulted in the deposit or payment of excess duties, fees, charges, or exactions. **[TD 85–123.]**

§ 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the district director even though a timely protest was not filed if an application for refund is filed with the district director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the district director has authority to grant. Where the district director has no authority to grant the waiver, the application shall be referred to the Commissioner of Customs. (Sec. 520, 46 Stat. 739, as amended; 19 U.S.C. 1520)

§ 173.6 Review of entry for fraud.

The district director may review any entry in which fraud is suspected. Where probable cause to believe there is fraud in the case is found by the district director, he may reliquidate an entry within 2 years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation. (Sec. 521, 46 Stat. 739; 19 U.S.C. 1521)

PART 174—PROTESTS

Sec.

174.0 Scope.

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174.31 Judicial review of denial of protest.
174.32 Publication

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart B also issued under sec. 514, 46 Stat. 736, as amended; 19 U.S.C. 1514. Subpart C also issued under sec. 515, 46 Stat. 736, as amended; 19 U.S.C. 1515.

Source: T.D. 70-181, 35 FR, 13429, Aug. 22, 1970, unless otherwise noted.

§ 174.0 Scope.

This part deals with the administrative review of decisions of the district director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review. **[TD 70-181.]**

Subpart A—General Provisions

§ 174.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *District director.* "District director" means the district director of Customs at a headquarters port other than the port of New York, N.Y., and the regional commissioner of Customs for Customs Region II at the port of New York, N.Y.

(b) *Further review.* "Further review" means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

§ 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraisement has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisement has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970.

(b) *Limitation*—(1) *Appraisement not final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, is not final by October 1, 1970, because an appeal for reappraisement was timely filed prior to such date, the provisions of this part relating to protests shall be applicable to a protest filed after the court's decision on the appeal to reappraisement has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisement.

(2) *Appraisement final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, has become final prior to October 1, 1970, but the entry has not been liquidated by such date, a protest filed in accordance with the provisions of this part after such liquidation shall not include issues which were raised or could have been raised on an appeal to reappraisement before the appraisement became final. **[TD 71-60.]**

(3) *Protest not disallowed.* When a protest filed prior to October 1, 1970, has not been disallowed in whole or in part before such date, the provisions of this part shall be applicable to such protests. The time within which any action must be taken under the provisions of this part with respect to such a protest shall commence on the date the protest was in fact filed. **[TD 71-60.]**

§ 174.3 Power of attorney to file protest.

(a) *When required.* When a protest is filed by a person acting as agent or attorney in fact for the principal, other than an attorney at law or a Customs broker or his authorized employee acting in his behalf, there shall have been filed or shall be filed with the protest a power of attorney which either specifically authorizes such agent to make, sign, and file the protest or grants unlimited authority to such agent. No power of attorney to file a protest shall be required in the following cases:

(1) *Attorney at law.* When the protest is filed by an attorney at law as agent or attorney for the principal, the signing of the protest as agent or attorney for the principal by the attorney at law shall be considered a declaration by him

that he is currently a member in good standing of the highest court of a State, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the protest for the principal. [TD 70-244.]

(2) *Customs broker or his employee.* When a protest is filed by a Customs broker, or an authorized employee acting in his behalf, as agent or attorney in fact for the principal, the signing of the protest by the Customs broker or an authorized employee in his behalf shall be considered a declaration by the broker that he or the employee signing in his behalf, is authorized to sign and file the protest for the principal. The Customs broker shall have, however, a general power of attorney to transact Customs business for the principal on Customs Form 5291.

(b) *Execution of power of attorney*—(1) *Corporation.* A corporate power of attorney to file protests shall be signed by a duly authorized officer or employee of the corporation. If the district director is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 141.37 of this chapter may be waived with respect to such power. [TD 73-175.]

(2) *Partnership.* A partnership power of attorney to file protests may be signed by one member in the name of the partnership, provided the power recites the name of all the members.

(c) *Duration.* Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of receipt thereof by the district director. All other powers of attorney may be granted for an unlimited period.

(d) *Revocation.* Any power of attorney shall be subject to revocation at any time by written notice given to and received by the district director. (Secs. 514, 515, 46 Stat. 734, as amended; 19 U.S.C. 1514, 1515)

Subpart B—Protests

§ 174.11 Matters subject to protest.

The following decisions of the district director, including the legality of all orders and findings entering into the same, may be protested under the provisions of § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) The appraised value of merchandise;

(b) The classification and rate and amount of duties chargeable;

(c) All charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(d) The exclusion of merchandise from entry or delivery under any provision of the Customs laws;

(e) The liquidation or reliquidation of an entry, or any modification thereof;

(f) The refusal to pay a claim for drawback; and

(g) The refusal to reliquidate an entry under § 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).

§ 174.12 Filing of protests.

(a) *By whom filed.* Protests may be filed by:

(1) The importer or consignee shown on the entry papers, or their sureties;

(2) Any person paying any charge or exaction;

(3) Any person seeking entry or delivery;

(4) Any person filing a claim for drawback; or

(5) Any authorized agent of any of the persons described in paragraphs (a)(1) through (4) of this section, subject to the provisions of § 174.3. [TD 80-271.]

(b) *Form and number of copies.* Protests against decisions of a district director shall be filed in quadruplicate on Customs Form 19 or a form of the same size clearly labeled "Protest" and setting forth the same content in its entirety, in the same order, addressed to the district director. All schedules or other attachments to a protest (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Signature.* The protest shall be signed by the person filing the protest, or his agent, or attorney. If the person filing is not the importer of record or consignee, he shall include his address and importer number, if any.

(d) *Place of filing.* Protests shall be filed with the district director whose decision is protested except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port. [TD 71-15.]

(e) *Time of filing.* Protests shall be filed, in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days after either:

(1) The date of notice of liquidation or reliquidation in accordance with §§ 159.9 or 159.10 of this chapter; [TDs 73-175, 80-271.]

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws or the date of a refusal to reliquidate under § 520(c)(1) of the Tariff Act of 1930, as amended);

(3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety. [TD 80-271.]

(f) *Date of filing.* The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) *Return of fifth copy.* If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

§ 174.13 Contents of protest.

(a) *Contents, in general.* A protest shall contain the following information:

(1) The name and address of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;

(2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;

(3) The number and date of the entry;

(4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;

(5) A specific description of the merchandise affected by the decision as to which protest is made;

(6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; [TD 80-271.]

(7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to Subpart C of this part and that is alleged to involve the same merchandise and the same

issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest.

(b) *Multiple entries.* A single protest may be filed with respect to more than one entry in any district if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry numbers, dates of entry, and dates of liquidation of all such entries, as well as the ports of entry where they may not coincide, should be set forth as an attachment to the protest.

(c) *Optional designation for refunds.* If desired by the importer/consignee the statement "any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of _____"

(Name and Address of Agent)

may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811;

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest. **[TD 80–271.]**

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the 90-day period within which such protest may be filed determined in accordance with § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision which is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise which is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the 90-day period has expired see § 174.28.

(b) *Form and number of copies of amendment.* An amendment to a protest shall be filed in quadruplicate on Customs Form 19 or on a form of the same size, clearly labeled "Amendment to Protest" at the top of the form. Schedules or other attachments (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Contents.* An amendment to a protest shall contain the following information:

(1) The name, address, and importer number of the protesting party, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these;

(2) The number and date of filing of the original protest;

(3) A specific description of the merchandise affected by the decision as to which the amendment to the protest is filed;

(4) The nature of and justification for the objection raised by the amendment set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(5) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review and that is alleged to involve the same merchandise and the same issues involved in the amendment.

(d) *By whom filed and signed.* An amendment to a protest may be filed and signed only by the person filing such protest or his agent or attorney subject to the provisions of § 174.3.

(e) *Place and date of filing.* An amendment to a protest shall be filed with the district director or port director with whom the protest was filed. The amendment shall be deemed filed on the date it is received by the Customs officer with whom it is required to be filed.

(f) *Return of fifth copy.* If a fifth copy of the amendment is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the amendment.

§ 174.15 Consolidation of protests filed by different parties.

Separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

§ 174.16 Limitation on protests after reliquidation.

A protest shall not be filed against the decision of the district director on reliquidation upon any question not involved in the reliquidation.

Subpart C—Review and Disposition of Protests

§ 174.21 Time for review of protests.

(a) *In general.* Except as provided in paragraph (b) of this section, the district director shall review and act on a protest filed in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 2 years from the date the protest was filed. If several timely filed protests are treated as part of a single protest pursuant to § 174.15, the 2-year period shall be deemed to run from the date the last such protest was filed in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). **[TD 74–37.]**

(b) *Protest relating to exclusion of merchandise.* If the protest relates to an administrative action involving exclusion of merchandise from entry or delivery under any provision of the Customs laws, the district director shall review and act on a protest filed in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 30 days from the date the protest was filed, unless the person filing the protest shall request an additional delay for the purpose of presenting evidence or argument with respect to the matters involved in the protest. In no event shall the district director (or the Commissioner of Customs or his designee if the protest is the subject of further review as provided for in §§ 174.25 and 174.26) delay action on the protest beyond 30 days, or such additional time period as may be agreed to by the person filing the protest. Any protest filed pursuant to this paragraph shall clearly so state on its face. **[TD 74–37.]**

§ 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest, by filing by registered or certified mail a written request for accelerated disposition with the district director to whom the protest was addressed.

(b) *Contents of request.* A request for accelerated disposition of protest shall contain the following information:

(1) The name, address, and importer number of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these; and

(2) The date of filing and number of the protest for which accelerated disposition is requested.

(c) *Review following request.* The district director shall review the protest which is the subject of the request within 30 days from the date of mailing of a request for accelerated disposition filed in accordance with the provisions of this section, and may allow or deny the protest in whole or in part.

(d) *Failure to allow or deny protest within 30-day period.* If the district director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to § 174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

§ 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the district director by filing, on the form prescribed in § 174.25, an application for such review within the time allowed and in the manner prescribed by § 174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the district director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the district director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with § 174.26.

§ 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the district director shall be accorded a party filing an application for further review which meets the requirements of § 174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made in any district with respect to the same or substantially similar merchandise; **[TD 71–123.]**

(b) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts; **[TD 75–186.]**

(c) Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or **[TD 75–186.]**

(d) Is alleged to involve questions which the Headquarters Office, U.S. Customs Service, refused to consider in the form of a request for internal advice pursuant to § 177.11(b)(5) of this chapter. **[TD 75–166.]**

§ 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application. **[TD 78–99.]**

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in § 174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in § 174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in subparagraph (2) of this paragraph would otherwise result in its denial.

§ 174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the district director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the district director decides that the protest in his judgment should be denied in whole or in part, he shall forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69–126 (34 FR 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

(i) Lack of uniformity of treatment;

(ii) The existence of an established and uniform practice;

(iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or

(iv) Questions which have not been the subject of a Headquarters, U.S. Customs Service ruling or court decision.

(2) All other protests shall be reviewed by the regional commissioner of Customs or his designee for the region in which the district lies. Such designee shall be a Customs officer who did not participate directly in the decision which is the subject of the protest.

§ 174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the district director together with directions for the disposition of the protest.

§ 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission. (R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

§ 174.29 Allowance or denial of protests.

The district director shall allow or deny in whole or in part a protest filed in accordance with § 514, Tariff Act of 1930, as amended, (19 U.S.C. 1514) within 2 years from the date the protest was filed. If the protest is allowed in whole or in part the district director shall remit or refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. If the protest is denied in whole or in part the district director shall give notice of the denial in the form and manner prescribed in § 174.30.

§ 174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. The notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). For purposes of § 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed. **[TD 80–271.]**

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to the district director instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the district director prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The district director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

§ 174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the U.S. Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after— **[TDs 78–17, 85–90.]**

(a) The date of mailing of notice of denial, in whole or in part, of a protest, or

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with § 174.22(d).

§ 174.32 Publication.

Within 120 days after issuing a protest review decision, the Customs Service shall publish the decision in the ***Customs Bulletin*** or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

Sec.
175.0 Scope.

Subpart A—Request for Classification Appraised Value and Rate of Duty

175.1 Submission of request.
175.2 Contents of request.
175.3 Domestic interested party.

Subpart B—Petitions

175.11 Filing of petitions.
175.12 Contents of petitions.

Subpart C—Procedure Following Petition

175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.
175.22 Publication of decisions following petition.
175.23 Notice of desire to contest decision.
175.24 Publication following notice of desire to contest.
175.25 Procedure at port of entry designated by petitioner.

Subpart D—Procedure Following Court Decision

175.31 Publication of notice of court decision.

Authority: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624.

Source: T.D. 70–181, 35 FR 13432, Aug. 22, 1970, unless otherwise noted.

§ 175.0 Scope.

This part sets forth the procedures applicable to requests by domestic interested parties for the classification and rate of duty applicable to designated imported merchandise, and to petitions alleging that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed upon designated imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the petitioner. **[TDs 70–181, 80–271.]**

Subpart A—Request for Classification Appraised Value and Rate of Duty

§ 175.1 Submission of request.

Written requests pursuant to § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), for information as to the classification and rate of duty imposed upon designated imported merchandise shall be submitted in triplicate to the Commissioner of Customs.

§ 175.2 Contents of request.

The request for information shall contain the following information:

(a) The name of the person making the request, his principal place of business, and the fact that he is a domestic interested party; **[TD 80–271.]**

(b) A designation of the imported merchandise for which the classification appraised value and rate is requested; and

(c) A showing of the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise.

§ 175.3 Domestic interested party.

"Domestic interested party", when used in this Part, means:

(a) A manufacturer, producer, or wholesaler in the U.S. of a like product,

(b) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the U.S. of a like product, or

(c) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the U.S. **[TD 80–271.]**

Subpart B—Petitions

§ 175.11 Filing of petitions.

(a) *Number of copies and where filed.* All petitions pursuant to § 516 Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be submitted to the Commissioner of Customs in triplicate.

(b) *By whom filed.* Petitions may be filed by the domestic interested parties themselves, or by duly authorized attorneys or agents on their behalf. A petition filed by a corporation shall be signed by an officer thereof, and a petition filed by a partnership shall be signed by a member thereof. **[TD 80–271.]**

§ 175.12 Contents of petition.

The petition shall be itemized as to each class or kind of merchandise involved, and shall contain the following:

(a) The name of the petitioner, his principal place of business, and the fact that he is a domestic interested party; **[TD 80–271.]**

(b) A statement showing the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner of Customs to establish the similarity between the domestic and foreign merchandise; and

(c) A presentation, in detail, of the information required by § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

Subpart C—Procedure Following Petition

§ 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

(a) *Notice of filing of petition.* Upon the filing of a petition, a notice shall be published in the ***Federal Register*** setting forth that a petition has been filed by a domestic interested party identifying the merchandise which is the subject of the petition, and its present and claimed appraised value or classification or rate of duty. The notice shall invite interested persons to make such written submissions as they desire within such time as is specified in the notice. **[TDs 74–236, 80–271.]**

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by a domestic interested party will be made available for inspection by interested parties in accordance with the provisions of § 103.11(b) of this chapter. However, neither a petitioner nor other interested parties shall in any case be permitted to inspect documents or papers of the consignee or importer which are exempted from disclosure by § 103.12 of this chapter. (R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 5

U.S.C. 552, 19 U.S.C. 66, 1516, 1624) **[TDs 80-271, 81-168.]**

§ 175.22 Publication of decisions following petition.

(a) *Incorrect appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon imported merchandise of the character which is the subject of a petition is found to be incorrect, the Commissioner of Customs shall so inform the petitioner, and shall cause the proper value, classification, or rate of duty to be published in the ***Federal Register*** and the weekly ***Customs Bulletin.*** Such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of such notice to the petitioner in the ***Customs Bulletin*** shall be appraised, classified, or assessed as to rate of duty in accordance with the published decision.

(b) *Correct appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon the imported merchandise which is the subject of the petition is found to be correct, the Commissioner of Customs shall so notify the petitioner, but the decision shall not be published.

§ 175.23 Notice of desire to contest decision.

If the petitioner is dissatisfied with the decision of the Commissioner that the appraised value, classification, or rate of duty is correct for the merchandise which was the subject of the petition, in accordance with § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) he may file with the Commissioner of Customs not later than 30 days after the date of the decision a notice that he desires to contest the appraised value of, classification of, or rate of duty assessed upon the imported merchandise. Such notice shall designate the port or ports at which such merchandise is being imported into the U.S., and at which the petitioner desires to protest.

§ 175.24 Publication following notice of desire to contest.

Upon receipt of a properly filed petitioner's notice that he desires to contest the decision as to the appraised value of, classification of, or rate of duty assessed upon the imported merchandise, the Commissioner of Customs shall cause to be published in the ***Federal Register*** and the weekly ***Customs Bulletin*** a notice of his decision as to the proper appraised value of, classification of, or rate of duty assessed upon the imported merchandise, and of petitioner's desire to contest the decision.

§ 175.25 Procedure at port of entry designated by petitioner.

(a) *Information as to character and description of merchandise.* All information secured by the district director for the port designated by the petitioner in his notice of desire to contest as to the character and description of merchandise of the kind covered by the petition and entered after publication by the Commissioner of Customs of his decision as to the proper appraised value, classification and rate of duty, and samples of such merchandise, shall be made available to the petitioner upon application by him to the district director.

(b) *Notice of liquidation.* Notice of liquidation of the first of the entries to be liquidated which would enable the petitioner to present the issue desired shall be given to the petitioner by the district director or the designated port as required by § 516. Tariff Act of 1930, as amended (19 U.S.C. 1516).

(c) *Further notice when issue not presented.* If, upon examination of the information and inspection of any sample supplied by the district director, the petitioner believes and the district director agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the petition, the district director shall then give the petitioner notice of the first liquidation thereafter which will permit the framing of the issue covered by the petition. The district director shall, under the same conditions, continue to give notice for so long as he is of the opinion that the petitioner affirmatively intends to contest. When the district director concludes that the petitioner does not intend to contest the decision of the Commissioner of Customs, he shall refer the matter to the Commissioner of Customs for his decision before issuing any further notice of liquidation.

Subpart D—Procedure Following Court Decision

§ 175.31 Publication of notice of court decision.

Notice of a decision of the Court of International Trade or of the Court of Appeals for the Federal Circuit which sustains, in whole or in part, a cause of action before the court under the provisions of § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be published by the Commissioner of Customs in the ***Federal Register*** within 10 days from the date of issuance of the court decision.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624)) **[TDs 80-271, 85-90.]**

PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

Sec.

176.0 Scope.

Subpart A—Service

176.1 Service of summons.
176.2 Service of notice of appeal.

Subpart B—Transmission of Records

176.11 Transmission of records to Court of International Trade.

Subpart C—Statement of Agreed Facts

176.21 Referral of statements of agreed facts for certification.
176.22 Deletion of protest or entry number.

Subpart D—Procedure Following Court Decision

176.31 Reliquidation following decision of court.

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624.

Source: T.D. 70–181, 35 FR 13433, Aug. 22, 1970, unless otherwise noted.

§ 176.0 Scope.

This part deals with service of summons and notice of appeal in actions before the Court of International Trade, the transmission of records to the court, statements of agreed facts, and Customs procedures following a decision by the court. **[TDs 70–181, 85–90.]**

Subpart A—Service

§ 176.1 Service of summons.

When an action is initiated in the Court of International Trade a copy of the summons shall be served in the manner prescribed by the Court of International Trade upon the district director for each Customs district in which a protest cited in the summons was denied, and an additional copy shall be served upon the Assistant Chief Counsel for Customs Court Litigation, U.S. Customs Service, 26 Federal Plaza, New York, N.Y. 10007. (28 U.S.C. 2632, as amended) **[TD 85–90.]**

§ 176.2 Service of notice of appeal.

When the U.S. is an appellee in an appeal taken to the Court of Appeals for the Federal Circuit, a copy of the notice of appeal shall be served upon the Assistant Chief Counsel for Customs Court Litigation. (28 U.S.C. 2601, as amended) **[TD 85–90.]**

Subpart B—Transmission of Records

§ 176.11 Transmission of records to Court of International Trade.

Upon receipt of service of a summons in an action initiated in the Court of International Trade the following items shall be immediately transmitted to the Court of International Trade as part of the official record by the Customs officer concerned:

(a) Consumption or other entry;
(b) Commercial invoice;
(c) Special Customs invoice;
(d) Copy of protest and any amendments thereto;
(e) Copy of denial or protest in whole or in part;
(f) Importer's exhibits;
(g) Official samples;
(h) Any official laboratory reports;
(i) The summary sheet;

(j) In any case in which one or more of the items listed in paragraphs (a) through (i) of this section do not exist, the Customs officer shall include a statement to that effect, identifying the items which do not exist. (28 U.S.C. 2632, as amended)

Subpart C—Statement of Agreed Facts

§ 176.21 Referral of statement of agreed facts for certification.

Statements of agreed facts (also referred to as stipulations) to be used by the Department of Justice in submitting cases to the Court of International Trade may be referred for certification to Customs officials by the office of the Assistant Attorney General, International Trade Field Office, Civil Division, Department of Justice, 26 Federal Plaza, New York, N.Y. 10278 **[TD 88–47.]**

§ 176.22 Deletion of protest or entry number.

If any protest number or entry number is to be deleted from a schedule of protest numbers or entry numbers attached to or embodied in a statement of agreed facts, a line shall be drawn through the number and the change shall be initiated by the authorized official making and approving the deletion.

Subpart D—Procedure Following Court Decision

§ 176.31 Reliquidation following decision of court.

(a) *Decision of U.S. Court of International Trade.* Except as provided in paragraph (c) of this section, an entry which is the subject of a decision of the U.S. Court of International Trade shall be reliquidated in accordance with the judgment order thereon at the expiration of 60 days from the date of the decision, unless an appeal or motion for a rehearing is filed. However, entries which are the subject of decisions of the court following a decision of the Court of Appeals for the Federal Circuit which involve the same issue, or which are based on submission of an agreed statement of fact, may be reliquidated immediately upon receipt of the judgment orders from the U.S. Court of International Trade.

(b) *Decision of the Court of Appeals for the Federal Circuit.* Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Appeals for the Federal Circuit shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Court of International Trade. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal.* Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Court of International Trade or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Appeals for the

Federal Circuit, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Court of International Trade prior to the expiration of the times specified in paragraphs (a) and (b) of this section. (Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514) [TD 85-90.]

PART 177—ADMINISTRATIVE RULINGS

Sec.

177.0 Scope.

Subpart A—General Ruling Procedure

177.1 General ruling practice and definitions.
177.2 Submission of ruling requests.
177.3 Nonconforming requests for rulings.
177.4 Oral discussion of issues.
177.5 Change in status of transaction.
177.6 Withdrawal of ruling requests.
177.7 Situations in which no ruling will be issued.
177.8 Issuance of rulings.
177.9 Effect of ruling letters; modification or revocation.
177.10 Publication of rulings.
177.11 Requests for advice by field offices.

Subpart B—Government Procurement; Country-of-Origin Determinations

177.21 Applicability.
177.22 Definitions.
177.23 Who may request a country-of-origin advisory ruling of final determination.
177.24 By whom request is filed.
177.25 Form and content of request.
177.26 Where request filed.
177.27 Oral discussion of issues.
177.28 Issuance of advisory rulings and final determinations.
177.29 Publication of notice of final determinations.
177.30 Review of final determinations.
177.31 Reexamination of final determinations.

Authority: 19 U.S.C. 66, 1624.

Source: T.D. 75–186, 40 FR 31929, July 30, 1975.

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the Headquarters Office of the U.S. Customs Service or the Regional Commissioner of Customs, New York Region. It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the ***Customs Bulletin.*** The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any Customs Service field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures set forth elsewhere in this chapter, including, but not limited to, those set forth in Part 12 (relating to submissions of proof of admissibility of articles detained under § 307 of the Tariff Act of 1930 (19 U.S.C. 1307)), Part 103 (relating to disclosure of information in Customs files), Part 133 (relating to disputed claims of piratical copying of copyrighted matter), Subpart C of Part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), Part 171 (relating to fines, penalties, and forfeitures), Part 172 (relating to liquidated damages), Part 174 (relating to protests), and Part 175 (relating to petitions filed by domestic interested parties pursuant to § 516 of the Tariff Act of 1930, as amended). Nor do the provisions of Part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a Customs Headquarters Office other than the Office of Regulations and Rulings. **[TDs 75–186, 80–271, 80–285, 84–149.]**

Subpart A—General Ruling Procedure

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Headquarters Office of the U.S. Customs Service or the Regional Commissioner, New York Region, will give full and careful consideration to written requests from importers or other interested parties for rulings or information setting forth, with respect to a specifically described Customs transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise. **[TDs 80–285, 84–149.]**

(2) *Current or completed transactions*—(i) *Current transactions.* A question arising in connection with a Customs transaction already before a Customs Service office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the ***Customs Bulletin,*** that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in § 177.11.

(ii) *Completed transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed Customs transaction, may not be the subject of a ruling request.

(b) *Oral advice.* The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service. However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Headquarters Office or the Regional Commissioner, New York Region, will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part **[TDs 80–285, 84–149.]**

(c) *Who may request a ruling.* A ruling may be requested by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A "person" in this context includes an individual, corporation, partnership, association, or other entity or group.

(d) *Definitions.* (1) A "ruling" is a written statement issued by the Headquarters Office or the Regional Commissioner,

New York Region, that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A "ruling letter' is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A "published ruling" is a ruling which has been published in the ***Customs Bulletin.***

(2) An "information letter" is a written statement issued by the Headquarters Office or the Regional Commissioner, New York Region, that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a particular set of facts. An information letter may be issued in response to a request for a ruling when (i) the request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request. **[TDs 80–285, 84–149.]**

(3) A "Customs transaction" is an act or activity to which the Customs and related laws apply. A "prospective" Customs transaction is one that is contemplated or is currently being undertaken and has not resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office. A "current" Customs transaction is one which is presently under consideration by a field office (port, district, or region) of the Customs Service. A "completed" Customs transaction is one which has been acted upon by a Customs Service field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs laws and regulations. In a series of identical, recurring transactions, each transaction shall be considered an individual transaction for purposes of this part.

(4) An "authorized agent" is a person expressly authorized by a principal to act on his behalf. A ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before the Customs Service as an agent in connection with a ruling request may be required to present evidence of his authority to represent the principal. The foregoing requirements will not apply to an individual representing his full-time employer, or to a bona-fide officer, director, or other qualified representative of a corporation, association, or organized group.

(5) The term "Customs and related laws," as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other legislation (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by the Customs Service.

(6) The term "Headquarters Office," as used herein, means the Office of Regulations and Rulings at Headquarters, U.S. Customs Service, Washington, D.C. **[TD 89–1.]**

§ 177.2 Submission of ruling requests.

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229. The Division and Branch in the Office of Regulations and Rulings to which the request should be directed may also be indicated, if known. Requests for Tariff Classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification and Ruling Requests, New York, New York, 10048. **[TDs 80–285, 84–149.]**

(b) *Content*—(1) *Generally.* Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts include the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any article involved in the transaction will arrive or be entered, or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the type of ruling requested.

(2) *Description of transaction*—(i) *Generally.* The Customs transaction to which the ruling request relates must be described in sufficient detail to permit the proper application of relevant Customs and related laws.

(ii) *Tariff classification rulings.*

(A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States is requested, the request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article, information as to the article's chief use in the U.S., its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the U.S.

(B) Ruling letters issued by the Regional Commissioner, New York Region, are limited to prospective transactions. The Regional Commissioner, Region II, shall not prepare final decisions under § 177.11 (Requests for Advice by Field Offices), § 174.23 (Further Review of Protests), § 177.10 (Change of Practices), 19 U.S.C. 1516 (petitions under § 516, Tariff Act of 1930), or Policies and Procedures Manual Supplement 2126–01. **[TDs 84–149, 89–1.]**

(C) The requesting party may send the request directly to the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C. 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the Regional Commissioner, New York Region. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth, he may petition the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C., for review of the ruling. **[TDs 80–285, 84–149.]**

(iii) *Valuation rulings.* If the transaction involves the valuation of an article for Customs purposes, the request for a ruling should include of the applicable information described in subparts C and D of Part 152 of this chapter, and, insofar as is relevant, the information which would be required on

an invoice as described in Subpart F of Part 141 of this chapter. The request should also describe the nature of the transaction (whether f.o.b./c.i.f., ex-factory, or some other arrangement), the relationship (if any) of the parties, whether the transaction was at arm's-length, whether there have been other sales of the same or similar merchandise in the country of exportation, whether an agency relationship exists, or any other information relevant to a determination under § 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(iv) *Carrier rulings.* If the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the U.S., the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary object of a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289 (see § 4.80a of this chapter), the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

(3) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs Service file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should so state and should specify the desired means of return. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request.

(4) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs Service file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(5) *Prior or current transactions.* Each request for a ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the ruling request is but one of a series of similar and related transactions, that fact must also be stated.

(6) *Statement of position.* If the request for a ruling asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party), must be identified clearly and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party) must be set forth. **[TDs 80–285, 85–39, 85–90.]**

(c) *Signing; instructions as to reply.* The request for a ruling must be signed by a person authorized to make the request, as described in § 177.1(c). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* The Headquarters Office and the Regional Commissioner, New York Region, will normally process requests for rulings in the order they are received and as expeditiously as possible. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram will be treated in the same manner as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed. **[TDs 80–285, 84–149.]**

§ 177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or to otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn.

§ 177.4 Oral discussion of issues.

(a) *Generally.* A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. Except under highly unusual circumstances, the conference will be held at the Headquarters Office of the Customs Service in Washington, D.C., or at New York Region, New York. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary. **[TDs 80–285, 84–149.]**

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for a ruling to provide for inclusion in the Customs Service file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the ruling request by the Headquarters Office.

§ 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Headquarters Office or the Regional Commissioner, New York Region, must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of any Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request. **[TDs 80–285, 84–149.]**

§ 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time prior to the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file. **[TD 80–285.]**

§ 177.7 Situations in which no ruling will be issued.

(a) *Generally.* No ruling letter will be issued in response to a request for a ruling which fails to comply with the provisions of this part. Moreover, no ruling letter will be issued with regard to transactions or questions which are essentially hypothetical in nature or in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so. No ruling letter will be issued in regard to a completed transaction.

(b) *Pending litigation in the U.S. Court of International Trade.* No ruling letter will be issued with respect to any issue which is pending before the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the Customs Service nor any of its officers or agents is named as a defendant. **[TD 85–90.]**

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally.* The Headquarters Office and the Regional Commissioner, New York Region, will endeavor to issue ruling letters setting forth their determinations with respect to a specifically-described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the interest of the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a ruling letter has been issued by the Headquarters Office or the Regional Commissioner, New York Region, shall ascertain that a copy of the ruling letter is attached to the documents filed in connection with that transaction with the appropriate Customs Service field office or otherwise bring the ruling to the attention of the appropriate Customs officer. A copy of any ruling letter received after the filing of such documents shall be forwarded immediately to the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in § 177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling

letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Headquarters Office or the Regional Commissioner, New York Region, will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted). **[TDs 80-285, 84-149.]**

(b) *Other rulings.* The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the ***Customs Bulletin,*** as described in § 177.10.

§ 177.9 Effect of ruling letters; modification or revocation.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Headquarters Office or the Regional Commissioner, New York Region, under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a subsequent change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. **[TDs 80-285, 84-149.]**

(b) *Application of rulings to transactions*—(1) *Generally.* Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in § 177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings.* Each ruling letter setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings.* Each ruling letter setting forth the proper valuation of an article under the provisions of § 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings.* Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the U.S. Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others.* A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under § 177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d) *Modification or revocation of ruling letters*—(1) *Generally.* Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed and, where circumstances warrant, by the publication of a notice or other statement in the ***Customs Bulletin.***

(2) *Effect of modification or revocation of ruling letters.* The modification or revocation of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was issued, or to any person directly involved in the transaction to which that ruling related, provided (i) The request for a ruling contained no misstatement or omission of material facts,

(ii) The facts subsequently developed are not materially different from the facts on which the ruling was based,

(iii) There has been no change in the applicable law,

(iv) The ruling was originally issued with respect to a prospective transaction, and

(v) All of the parties involved in the transaction acted in good faith in reliance upon the ruling and retroactive modification or revocation would be to their detriment.

Nothing in this subparagraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Headquarters Office or the Regional Commissioner, New York Region. **[TDs 80-285, 84-149, 87-89, 89-1.]**

§ 177.10 Publication of decisions.

(a) *Generally.*—Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective,

current, or completed), the Customs Service shall publish the decision in the ***Customs Bulletin*** or otherwise make it available for public inspection. For purposes of this paragraph, a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR, part 1, 19 CFR, part 103, and 19 CFR 177.8(a)(3). **[TD 78–394.]**

(b) *Rulings regarding a rate of duty or charge.* Any ruling regarding a rate of duty or charge which is published in the ***Customs Bulletin*** will establish a uniform practice. A published ruling may result in a change of practice, it may limit the application of a court decision, it may otherwise modify an earlier ruling with respect to the classification or valuation of an article or any other action found to be in error or no longer in accordance with the current views of the Customs Service, or it may revoke a previously-published ruling or a previously-issued ruling letter. No ruling published under the provisions of this section will have the effect of changing either an earlier published ruling or a practice established by other means by imposing a higher rate of duty or charge on an article unless the earlier ruling or practice has been determined to be clearly wrong.

(c) *Changes of practice or position.* (1) Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the ***Federal Register*** and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry. No advance notice will be provided with respect to rulings which result in a change of practice but no change in the rate of duty.

(2) Before the publication of a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice that the position (or prior ruling on which the position is based) is under review will be published in the ***Federal Register*** and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the change of position will result in a holding that an activity is not restricted or prohibited and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of the general public.

(d) *Limiting rulings.* A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided for in the ruling itself, all rulings published under the provisions of this part shall be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the ***Federal Register.*** **[TD 78–394.]**

§ 177.11 Requests for advice by field offices.

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an imported or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions*—(1) *When a ruling has been issued*—(i) *Requests by field offices.* If the Headquarters Office, or the Regional Commissioner, New York Region, has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction feels that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling. **[TDs 80–285, 84–149.]**

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in subparagraph (3) of this paragraph, request advice from the Headquarters Office as to the proper application of the ruling to the transaction.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was re quested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of subparagraph (3) of this paragraph.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction,

or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under subparagraph (3) of this paragraph, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of Part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 120 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the ***Customs Bulletin*** or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR, part 103. **[TD 78-394.]**

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise. **[TD 85-90.]**

Subpart B—Government Procurement; Country-of-Origin Determinations

§ 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, "Trade Agreements Act of 1979," Pub. L. 96-39, 93 Stat. 144, for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Procurement Regulations (41 CFR Part 1-6) and the Defense Acquisition Regulation (32 CFR Section VI).

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) *Advisory ruling.* An advisory ruling is a non-binding, non-reviewable written statement issued by the Director, Entry Procedures and Penalties Division, Headquarters, U.S. Customs Service, which does no more than call attention to a well established interpretation or principal of law relating to the country of origin, without applying it to a particular set of facts. Customs will issue an advisory ruling in response to a request for a final determination if:

(1) The request suggests that general information, rather than a final determination, is actually being sought,

(2) The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or

(3) The ruling requested cannot be issued for any other reason, and Customs believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request. An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h).

(c) *Final determination.* A final determination is a binding judicially reviewable statement issued by the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, in response to a written request submitted under the provisions of this subpart that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise.

(d) *Party-at-interest.* For purposes of this subpart the term party-at-interest means—

(1) A foreign manufacturer, producer, or exporter, or a U.S. importer of merchandise which is the subject of a final determination under this subpart,

(2) A manufacturer, producer, or wholesaler in the U.S. of a like product,

(3) U.S. members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the U.S. of a like product, and

(4) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the U.S.

§ 177.23 Who may request a country-of-origin advisory ruling or final determination.

A country-of-origin advisory ruling or final determination may be requested by:

(a) A foreign manufacturer, producer, or exporter, or a U.S. importer of merchandise,

(b) A manufacturer, producer, or wholesaler in the U.S. of a like product,

(c) U.S. members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the U.S. of a like product, or

(d) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the U.S.

§ 177.24 By whom request is filed.

A request may be filed by an individual or organization listed in § 177.23 or by a duly authorized attorney or agent on behalf of the individual or organization. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

§ 177.25 Form and content of request.

(a) A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin.

(b) A request for a final determination shall be in writing and shall contain the following information:

(1) The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of § 177.24;

(2) A description of the existing article for which a country-of-origin determination is requested;

(3) The country or instrumentality an article is claimed to be the product of;

(4) Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;

(5) If applicable, the specific procurement for which the final determination is requested.

§ 177.26 Where request filed.

The request shall be filed with the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 177.27 Oral discussion of issues.

Any party authorized to request a ruling under the provisions of § 177.23 may request an opportunity for oral discussion of the issues presented in the request. The oral discussion of issues will be governed by the provisions of § 177.4

§ 177.28 Issuance of advisory rulings and final determinations.

(a) Pursuant to a request for an advisory ruling which meets the requirements of this subpart, Customs will promptly issue an advisory ruling.

(b) Pursuant to a request for a final determination which meets the requirements of this subpart, Customs will promptly issue a final determination. If the request does not meet the requirements of this subpart Customs may decline to issue a final determination or may issue instead an advisory ruling.

(c) Requests for final determinations which include the information set forth in § 177.25(b)(5) (relating to a specific procurement) will be considered by Customs before all other requests (advisory rulings and final determinations).

§ 177.29 Publication of notice of final determinations.

Notice of all final determinations shall be published in the ***Federal Register*** within 60 days of the date the final determination is issued.

§ 177.30 Review of final determinations.

Any party-at-interest listed in § 177.22(d) may seek judicial review of a final determination within 30 days after publication of such determination in the ***Federal Register,*** and may seek judicial review of a refusal to issue a final determination within 30 days after such refusal. The Court of International Trade shall have exclusive jurisdiction to review a final determination or a refusal to issue a final determination made under this subpart.

§ 177.31 Reexamination of final determinations.

A party-at-interest, other than the party-at-interest which requested and received the initial final determination, may ask Customs to consider the matter anew and issue, on an expedited basis, a new final determination. Such a request shall specifically identify the previous final determination. Upon receipt of such a request, Customs will issue a new final determination within five working days of receipt of the request unless (a) the previous final determination was the subject of a contested lawsuit timely filed in the Court of International Trade under 28 U.S.C. 1581(e) or, (b) the merchandise at issue in the initial final determination was tendered and deemed responsive to the request for proposals or an invitation for bids in a competitive procurement subject to the Buy American Act (41 U.S.C. 10a *et seq.*) and a contract under such procurement was let. Any new final determination issued under this section shall be published in accordance with § 177.29 and is reviewable under § 177.30. **[TD 83-13.]**

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Secs.

178.1 Purpose.

178.2 Listing of OMB Control Numbers.

Authority: R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; Pub. L. 96–511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*

Source: T.D. 85–53, 50 FR 11849, March 26, 1985, unless otherwise noted.

§ 178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB control No.
§ 4.7a	Unique bill of lading identifier for inward manifests	1575–0142
§§ 4.20, 4.23, and 4.24	Certification of payment of tonnage tax	1515–0113
§ 4.97	Application for foreign vessel to engage in salvage operation/report of salvage operation	1515–0132
§ 4.98(i)	Users fees for Customs services	1515–0154
§ 10.1	Declaration of foreign shipper that U.S. articles were exported and returned without having been advanced in value or improved in condition.	1515–0099
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PART 191—DRAWBACK

Sec.

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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 9, HTSUS), 1313, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.
Source: T.D. 83-212, 48 FR 46753, October 14, 1983, unless otherwise noted.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

(a) *Drawback.* "Drawback" means a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax, or fee, was assessed or collected.

(b) *Designated merchandise.* "Designated merchandise" means imported duty-paid merchandise or drawback products identified (either physically or by accounting methods), by drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2).

(c) *Drawback proposal.* A "drawback proposal" means a written document executed by a manufacturer or producer which contains an offer to operate under the drawback law and regulations.

(d) *Drawback acceptance.* "Drawback acceptance" means a letter from Customs to the manufacturer or producer accepting the proposal. Regional commissioners of Customs accept proposals filed pursuant to 19 U.S.C. 1313(a). U.S. Customs Headquarters accepts proposals in all other cases.

(e) *Specific drawback contract.* A "specific drawback contract" means the drawback proposal and the drawback acceptance. Synopses of contracts are published in the weekly ***Customs Bulletin,*** where each contract is assigned an identifying Treasury Decision (T.D.) number.

(f) *General drawback contract.* A "general drawback contract" means a contract offer prepared by Customs and published in the ***Customs Bulletin,*** and a letter of acceptance by anyone able to comply with its terms and conditions. Letters of acceptance to adhere to the terms shall be filed with a regional commissioner.

(g) *Drawback product.* A "drawback product" means a finished or partially finished product manufactured in the U.S. under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon exportation of the ultimate product. For purposes of 19 U.S.C. 1313(b), drawback products may be designated as the basis for drawback or deemed to be domestic merchandise.

(h) *Drawback entry.* A "drawback entry" means a document containing a description of, and other required information concerning, exported or destroyed articles on which drawback is claimed. Depending on the type of drawback applied for, entries are filed on Customs Form 331, 7512, or 7539. **[TD 86-118.]**

(i) *Drawback claim.* A "drawback claim" means the drawback entry and related documents required by these regulations which together constitute the request for drawback payment.

(j) *Direct identification drawback.* "Direct identification drawback" means drawback authorized under § 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). See § 191.4(a)(1) of this part.

(k) *Substitution drawback.* "Substitution drawback" means drawback authorized under § 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). See § 191.4(a)(2) of this part.

(l) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(m) *Same kind and quality merchandise.* "Same kind and quality merchandise" means merchandise which may be substituted under substitution drawback. Fungible merchandise is always same kind and quality merchandise; however, same kind and quality merchandise is not always fungible merchandise.

(n) *Schedule.* A "schedule" means a document filed by a drawback claimant showing the quantity of imported material used or appearing in each unit of product exported with drawback or showing the different styles or the capacities of containers for the products.

(o) *Verification.* "Verification" means the examination of any and all records, (see § 162.1a(a) of this chapter), maintained by the claimant, whether or not specifically described in the claimant's proposal, which are required by the regulatory auditor to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified. Verification also includes a determination that the exported product was produced in conformity with the drawback manufacturing process, as described and approved in the claimant's proposal.

(p) *Abstract of manufacturing records.* "Abstract of manufacturing records" means a summary of original documents. A Manufacturing Drawback Entry and/or Certificate, Customs Form 331, when properly completed, may serve as an abstract of manufacturer's record. **[TD 86-118.]**

§ 191.3 Duties subject to drawback.

The duties subject to drawback include:

(a) All ordinary Customs duties:

(b) Dumping duties assessed under title VII, Tariff Act of 1930, as amended (19 U.S.C. 1673.);

(c) Countervailing duties assessed under §§ 303 and 701, Tariff Act of 1930, as amended (19 U.S.C. 1303, 1671); and

(d) Marking duties assessed under § 304(c). Tariff Act of 1930, as amended (19 U.S.C. 1304(c)).

§ 191.4 Types of drawback.

(a) *Drawback of duties and taxes.* Drawback of duties and taxes ordinarily are authorized in the following instances:

(1) *Direct identification drawback.* Drawback of duties is provided for in § 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the U.S. wholly or in part with the use of imported merchandise.

(2) *Substitution drawback.* If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, drawback is provided for in § 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b)), upon the exportation of any of the articles, even though none of the imported merchandise may actually have been used in the manufacture or production of the exported articles. The amount of drawback is the same as that which would have been allowed had the merchandise used therein been imported.

(3) *Merchandise not conforming to sample or specifications or shipped without consent of consignee.* Drawback is provided for in § 313(c). Tariff Act of 1930, as amended (19 U.S.C. 1313(c), upon the exportation of imported merchandise not conforming to sample or specifications or shipped without consent of the consignee.

(4) *Drawback of internal-revenue taxes.* Drawback of internal-revenue taxes is provided for in § 313(d). Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the U.S. in part from domestic tax-paid alcohol.

(5) *Imported salt for curing fish.* Drawback of duties is provided for in § 313(e), Tariff Act of 1930, as amended (19 U.S.C. 1313(e)), on salt imported in bond and used in curing fish. (See § 10.80 of this chapter.)

(6) *Exportation of meats cured with imported salt.* Drawback of duties is provided for in § 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), in amounts of not less than $100, upon the exportation of packed or smoked meats cured in the U.S. with imported salt.

(7) *Material for construction and equipment of vessels and aircraft built for foreigners.* Drawback of duties is provided for in § 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313 (g)), on materials imported and used in constructing and equipping vessels and aircraft built for foreign account and ownership or for the government of any foreign country, even though these vessels and aircraft may not be exported within the strict meaning of the term.

(8) *Foreign-built jet aircraft engines processed in the U.S.* Drawback of duties is provided for in § 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), in amounts of not less than $100, upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt or reconditioned in the U.S. with the use of imported merchandise, including parts.

(9) *Direct identification same condition drawback.* Drawback of duties is provided for in § 313(j)(1), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the U.S. before such exportation or destruction.

(10) *Substitution same condition drawback.* Drawback of duties is provided for in § 313(j)(3), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(3)), on merchandise fungible with imported merchandise when exported or destroyed under Customs supervision, provided all the conditions described under § 191.141(h) are complied with.

(11) *Packaging materials.* Drawback of duties is provided for in § 313(j)(4), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(4)), on packaging material used to package or repackage merchandise exported with direct identification same condition drawback. (19 U.S.C. 1313(j) contains two paragraphs numbered (4). See first paragraph (4)).

(12) *Supplies for certain vessels and aircraft.* Drawback of duties and taxes is provided for in § 309(b), Tariff Act of 1930, as amended (19 U.S.C. 1309(b)), on articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous Customs custody elsewhere than a bonded warehouse, or foreign trade zones and articles of domestic manufacture or production, which are laden as supplies upon certain vessels or aircraft of the U.S. or as supplies including equipment upon or used in the maintenance or repair of certain foreign vessels or aircraft.

(13) *Merchandise exported from continuous Customs custody.* Drawback of duties is provided for in accordance with § 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), upon the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation, provided it was exported or shipped within 5 years after the date of its importation.

(14) *Merchandise transferred to a foreign trade zone from Customs territory.* Drawback of duties and taxes is provided for in accordance with the fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage. **[TD 85-123.]**

(b) *Refund of internal revenue taxes on imported distilled spirits, wines, or beer.* Refund, remission, abatement, or credit of internal revenue taxes paid or determined incident to importation on imported distilled spirits, wines, and beer is provided for in accordance with § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), upon the exportation, or destruction under Customs supervision of these articles found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.5 Retention of records.

All records required to be kept by the manufacturer or producer under this part with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer (see §§ 191.21(a)(1) and

191.22(d) of this part), shall be retained for at least 3 years after payment of such claims.

§ 191.6 Authority to sign drawback documents.

(a) *Who shall sign.* Documents listed in paragraph (b) of this section shall be signed by one of the following:

(1) The president, a vice president, secretary, or treasurer of a corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship; or

(4) Any person other than those described in paragraphs (a)(1) through (a)(3) of this section with a power of attorney. (See subpart C of Part 141 of this chapter.)

(b) *List of documents.* The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries.

(2) Certificates of delivery.

(3) Certificates of manufacture.

(4) Abstracts of manufacturing records.

(5) Proposals of manufacturers or producers, schedules, and supplemental schedules.

(6) Proposals of subcontractors.

(7) Letter of intention to adhere to general drawback contracts.

(8) Endorsements of exporters on bills of lading or notices of exportation.

(9) Authorizations by manufacturers, producers, exporters, or agents to pay drawback to other persons.

§ 191.7 Protests.

Protest procedures shall be in accordance with Part 174 of this chapter. (Sec. 514, 46 Stat. 734, as amended: 19 U.S.C. 1514).

§ 191.8 Time limitations.

(a) *General time limit.* Drawback shall be allowed only if the completed article is exported within 5 years after importation of the merchandise identified or designated to support the claim.
(19 U.S.C. 1313(i))

(b) *Same condition drawback.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported in the same condition as when imported, or destroyed under Customs supervision, and is not used within the U.S. before such exportation or destruction.
(19 U.S.C. 1313(j)).

(c) *Merchandise in continuous Customs custody.* Drawback shall be allowed on imported merchandise which is exported, or shipped from continuous Customs custody to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, only if exported or shipped within 5 years after the date of its importation.

(Sec. 557(a), 46 Stat. 744, as amended: 19 U.S.C. 1557(a)).

§ 191.9 Falsification of drawback claims.

Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be fined not more than $5,000 or imprisoned no more than 2 years, or both, and the merchandise or its value shall be forfeited.

(Sec. 550, 62 Stat. 718; 18 U.S.C. 550).

§ 191.10 Verification of drawback claims.

(a) *Claims.* A drawback claim filed under a drawback contract shall be subject to verification by the regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region the claim is filed when the factory covered by the claim also is located in the same region.

(b) *Two or more factories.* If the claim selected for verification is filed in one region and one or more factories covered by the claim is located in another region, the regional commissioner selecting the claim for verification, in addition to taking the verification action provided for in paragraph (a) of this section, may forward copies of the claim and the drawback contract, and request for verification to the regional commissioners in whose regions the other factories are located.

(c) *Method.* The verifying official shall verify the claim and material set forth in the related drawback contract. Verification shall include an examination of the manufacturing records and all the accounting and financial records relating to the transaction(s).

(d) *Liquidations.* When a claim has been selected for verification, the appropriate Customs official will be notified of the claimant's identity, and liquidation will be postponed on only those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate Deputy Assistant Regional Commissioner (Regulatory Audit) issues a report. In the event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in Customs discretion, all claims.

(e) *Errors in drawback proposals.*—(1) *Contracts accepted by Customs Headquarters.*—(i) *Action by regional commissioner.* If verification of a drawback claim filed under a drawback contract accepted by Headquarters reveals errors or deficiencies in the drawback proposal on which the contract was based, the regional commissioner shall furnish a copy of the audit report to Headquarters (Attention: Drawback and Bonds Branch. Office of Regulations and Rulings).

(ii) *Action by Headquarters.* A regional commissioner forwarding an audit report to Headquarters shall suspend liquidation of all drawback claims filed under the contract. Headquarters shall offer the claimant an opportunity to correct its proposal within a specified time.

(iii) *If claimant does not correct proposals.* If the claimant does not take corrective action within the prescribed time, the appropriate regional commissioner shall liquidate the claim(s) "no drawback."

(2) *Contracts accepted by regional commissioner.* The regional commissioner shall offer the claimant an opportunity within a specified time to amend proposals that are the basis of contracts which he has accepted. If the claimant does not take corrective action within the prescribed time, the regional commissioner shall liquidate the claim(s) "no drawback."

§ 191.11 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds shall not be considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Certificate.* With each drawback entry, except those filed pursuant to § 313(c) and 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(c), (j)), the drawback claimant shall certify whether or not the merchandise concerned was sold to the U.S. Government.

(c) *Allowance of drawback.* If the merchandise was sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, or agency of the U.S. Government, which purchased it; or

(2) Supplier, or any of the parties specified in § 191.73(b) of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch or agency concerned certifying that the right to drawback was reserved by the supplier with the knowledge and consent of the department, branch, or agency.

§ 191.12 Drawback on duties paid to Puerto Rico.

Any drawback of duties authorized under this part shall be paid from special fund 20X6587(A/R), Refunds, Transfers and Expenses of Operations, Puerto Rico, U.S. Customs Service, if the duties were originally paid into this fund (see 19 U.S.C. 1313(m)). **[TD 85-123.]**

§ 191.13 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes. However, under 19 U.S.C. 1313, there is no authority of law for the allowance of drawback of Customs duty on articles manufactured or produced in the U.S. and shipped to Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

Subpart B—Specific Drawback Contracts

§ 191.21 Drawback proposal.

(a) *Proper applicant.* Unless operating under a general drawback contract, each manufacturer or producer of articles intended for exportation with drawback, whether a primary, intermediate, or final manufacturer or producer of the articles and whether or not the owner of the merchandise used in the manufacture or production, shall apply for a specific drawback contract by submitting a drawback proposal. Procedures for adhering to a general drawback contract are provided in Subpart D.

(1) *Complementary recordkeeper.* Each person who keeps complementary records as provided for in § 191.22(d) of this part shall file a proposal describing these records in accordance with the procedure prescribed in this section. Complementary records may be signed by the complementary recordkeeper in accordance with § 191.6(a) of this part.

(2) *Subcontractors.* If a manufacturer or producer having a drawback contract engages a subcontractor to perform work which for drawback purposes does not constitute a manufacture or production, with the use of material which the principal plans to make the subject of a drawback claim, the subcontractor, unless operating under a general drawback proposal to establish how it will maintain the identification of the merchandise. The proposal, which is subject to the provisions of this section, is required only if the work performed by the subcontractor results in a problem in identification of the merchandise (for example, by changing its form or quantity).

(b) *Contents.* The proposal of each manufacturer or producer, complementary recordkeeper, and subcontractor shall:

(1) Describe his manufacturing operation fully and method of compliance with all requirements of the drawback law and regulations;

(2) State that the records of identification, manufacture or production, and storage prescribed in § 191.22 will be maintained; and

(3) Contain an agreement to follow the methods and keep records concerning drawback procedures.

(c) *Sample proposal.* Except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, upon request, shall provide each prospective, drawback applicant with a sample drawback proposal to assist the prospective applicant in preparing its submission. Sample proposals for direct identification drawback shall be provided by the regional commissioner upon request.

(d) *Submission.* Each manufacturer or producer who proposes to file for drawback exclusively under the provisions of §§ 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall submit the proposal described in paragraph (b) of this section, in duplicate, to the regional commissioner where its drawback entries will be liquidated. Each manufacturer or producer who proposes to file for drawback under the provision of § 313(b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313(b), (d), (g), (h)), or in any combination of § 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), with § 313(b), (d), or (g), shall submit the proposal described in paragraph (b) of this section, in triplicate, to Customs Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(e) *Two or more regions involved.* If drawback entries are to be liquidated at more than one regional office, the manufacturer or producer shall file two additional copies of the proposal for each additional office.

§ 191.22 Records, storage, identification.

(a) *Records for direct identification and other non-substitution manufacturing drawback. (1) General Rule.* Except for record requirements under § 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), set forth in § 191.32 of this part, each manufacturer or producer shall keep records to establish for all articles manufactured or produced for exportation with drawback:

(i) The data or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

(iii) The quantity and description of the articles manufactured or produced;

(iv) The quantity of waste incurred. If claim for waste is waived and the appearing in basis is used, waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the articles; and

(v) That the finished articles on which drawback is claimed, were exported within 5 years after the importation of the duty-paid merchandise.

(2) *Valuable waste.* When waste has a value and the manufacturer or producer has not limited its claims to the quantity of imported duty-paid merchandise or drawback products appearing in the articles it shall keep records to show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste. In liquidating the drawback entry, the quantity of imported duty-paid merchandise or drawback products used will be reduced by an amount equal to the quantity of merchandise the value of the waste would replace.

(3) *Duty-free or domestic merchandise.* The records of the manufacturer or producer shall show the quantity, if any, of duty-free or domestic merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing in them.

(4) *Filing an abstract.* The drawback claimant shall file with the entry an abstract of the records of the manufacturer or producer.

(5) *Multiple products.*

(i) *General rule.* Where two or more products result from the use of merchandise, records shall show the value of each product at the time of separation.

(ii) *Claim covering a manufacturing period.* Where the operation results in two or more products and a claim covers a manufacturing period rather than a manufacturing lot, the time of separation of the products shall be considered the entire period covered by the claim, and the value per unit of product is its weighted average market value for the period. Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(b) *Storage and identification.* The merchandise and articles to be exported shall be stored in a manner which will enable the manufacturer, producer, or claimant (1) to determine, and the Customs officials to verify, the applicable import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers; and (2) to identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in the manufacture or production.

(c) *Identification of two or more lots.* Manufacturers, producers, or claimants may identify for drawback purposes commingled lots of fungible merchandise and commingled lots of fungible products by applying first-in-first-out (FIFO) accounting principles or any other accounting procedure approved by Customs.

(d) *Complementary records.* When Customs Headquarters or the regional commissioner, in appropriate cases, determines that a manufacturer or producer is unable to record all the information required for drawback, complementary records covering the information not available to the manufacturer or producer may be kept by the person(s) in the U.S. for whose account the products are manufactured or produced; and abstracts of these records shall be filed with the drawback entry. (See § 191.21(a)(1)).

(e) *Records and storage of merchandise by persons required to certify its delivery.*—(1) *Storage and records.* Each person required by §§ 191.65 and 191.66(d) of this part to certify the delivery of imported merchandise or drawback products shall store this merchandise and products while in his possession and maintain records to show the:

(i) Quantity, identity, and description of the merchandise or products;

(ii) Date on which the merchandise or products were received by him;

(iii) Person from whom received;

(iv) Date delivered by him to other persons; and

(v) Persons to whom these deliveries were made.

(2) *Certificate or endorsements.* These records shall be the basis of the certificates or endorsements required by §§ 191.65 and 191.66(d) of this part.

§ 191.23 Approval.

(a) *General rule.* If the required proposal(s) comply with the law and regulations, the regional commissioner in a case under § 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). or Customs Headquarters in a case under § 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), or (h)), or in any combination of § 313 (a) with § 313 (b), (d). or (g), shall approve the drawback contract for a period of 15 years from the date of approval. (See § 191.26 of this part.)

(b) *Two or more regions.* When a proposal under § 313(a). Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed in the proposal has the authority to approve or disapprove the contract.

(c) *Drawback entries filed before contract issued.* Drawback entries may be filed before the drawback contract covering the claim is approved, but no drawback shall be paid until the contract is approved.

(d) *Payment of drawback.* After approval of the contract, drawback will be paid on articles manufactured or produced and exported in accordance with law, regulations, and contract.

§ 191.24 Schedules and supplemental schedules.

When a drawback contract provides that drawback shall be based upon a schedule filed by the manufacturer or producer, the appropriate regional commissioner where the entry is filed or Customs Headquarters, in accordance with § 191.23 of this part, shall review, and if satisfactory, approve the drawback schedule. If the contract authorizes the filing of supplemental schedules, schedules may be revised as necessary by the holder of the drawback contract. These revised supplemental schedules, if approved by the appropriate regional commissioner, shall be used to liquidate drawback claims.

§ 191.25 Modification of contracts.

(a) *Supplemental proposals.* A manufacturer or producer desiring to modify an existing contract shall prepare a supplemental proposal in the form of the original proposal. The

supplemental proposal shall contain all information necessary for a complete contract, as provided in § 191.21 of this part.

(b) *Approval.*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the appropriate regional commissioner or Customs Headquarters shall approve a new drawback contract pursuant to § 191.23 of this part, for a period of 15 years from the date of its approval if the supplemental proposal complies with law and regulations.

(2) *Limited modifications.* A supplemental proposal to modify an existing contract under § 313(b), (d), or (g), Tariff Act of 1930, as amended, which otherwise would be submitted to Customs Headquarters, shall be submitted to the appropriate regional commissioner for approval provided the changes covered by the modification are limited to:

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback contract of the manufacturer or producer:

(iii) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(iv) Any combination of the foregoing changes.

(c) *Effect.* The new drawback contract shall supersede the contract which it modifies, and the Customs official who approves the new contract shall revoke the pre-existing contract without prejudice to claims existing thereunder.

§ 191.26 Termination or renewal.

Drawback contracts shall terminate 15 years from the date of approval unless, prior to the expiration of the each 15-year period, the manufacturer or producer in accordance with § 191.23 of this part requests the applicable regional commissioner or Customs Headquarters to renew the contract for another 15-year period. A contract issued under § 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), covering two or more regions, shall be renewed by the regional commissioner who approved the contract. A manufacturer or producer may terminate its contract at any time by writing to the appropriate regional commissioner or Customs Headquarters, as applicable.

§ 191.27 Tradeoff.

(a) *Exchanged Merchandise.* To comply with §§ 191.22(a)(ii) and 191.32(a)(3), the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality shall be treated as use of the imported merchandise if no certificate of delivery (Customs Form 7543) is issued covering the imported merchandise. This provision shall be known as tradeoff and is authorized by section 313(k), Tariff Act of 1930, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities, but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must be a straight tradeoff of same kind and quality merchandise, with no additional payments of any type, including additional payment in kind.

(c) *Application.* Each would-be user of tradeoff, except those operating under a general drawback contract covering substitution, must apply to the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the drawback proposal. For those users manufacturing under direct identification drawback, the request should be made by a separate letter. General drawback contracts covering substitution will be revised to provide for tradeoff. **[TD 85-123.]**

Subpart C—Use of Substituted Merchandise

§ 191.31 Drawback substitution.

The procedures set forth in subparts A and B of this part are applicable to drawback under the substitution provision (19 U.S.C. 1313(b)), except as otherwise provided in this subpart.

§ 191.32 Records and general provisions.

(a) *Records for substitution drawback.* The records of the manufacturer or producer of articles manufactured or produced in accordance with § 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), shall establish:

(1) The identity and specifications of the merchandise designated;

(2) The quantity of merchandise of the same kind and quality as the designated merchandise used to produce (or appearing in) the exported articles;

(3) That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period, it manufactured or produced the exported articles; and

(4) That the completed articles were exported within 5 years after importation of the designated merchandise.

(b) *Valuable waste records.* When drawback claims are not limited to the quantity of merchandise appearing in the articles manufactured or produced for exportation with drawback, the records of the manufacturer or producer shall show the quantity and value of both the merchandise used in the manufacture or production of the articles and valuable waste incurred in order that the deduction provided for in § 191.22(a)(2) may be made in liquidation.

(c) *Use by same manufacturer or producer at different plants.* Duty-paid merchandise or drawback products used at one plant of a manufacturer or producer within 3 years after the date on which the material was received may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other plants of the same manufacturer or producer.

(d) *Designation.* A manufacturer or producer may designate any merchandise which it has used in manufacturing or production. **[TD 85-123.]**

§ 191.33 Multiple products.

When two or more products are produced concurrently in an operation under § 313(b), Tariff Act of 1930, as amended (19 U.S.C 1313(b)), drawback shall be distributed to each product in accordance with its relative value at the time of separation. Where the abstract covers a manufacturing period rather than a manufacturing lot, the entire period of the abstract is the time of separation of the products and the value per unit of product is the weighted average market value for the abstract period.

§ 191.34 Agency.

(a) *General rule.* If an owner of imported or domestic merchandise furnishes this merchandise to an agent in accordance with a contract between the two parties, and the agent manufactures from it articles for the owner's account, the owner shall be considered as the user of the merchandise.

(b) *Contracts required.*—(1) *Owner's contract.* An owner of merchandise who wishes to be considered a manufacturer pursuant to paragraph (a) of this section shall apply for a drawback contract under subpart B of this part. The proposal shall describe the agency arrangement and explain how the owner and agent together will comply with the drawback law and regulations.

(2) *Agent's contract.* Each agent operating under this section must have a drawback contract covering the articles manufactured.

Subpart D—General Drawback Contracts

§ 191.41 Applicability.

A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

§ 191.42 Procedures.

(a) Customs Headquarters shall from time to time prepare and publish in the ***Customs Bulletin*** an offer for a general drawback contract in situations where numerous manufacturers or producers have similar operations and wish to claim drawback.

(b) Any manufacturer or producer who can comply with the terms and conditions of the published offer for a general drawback contract may adhere to it by notifying a regional commissioner in writing of its acceptance and providing him with the following information:

(1) Name and address of adherent;

(2) Factories which will operate under the contract;

(3) If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of the adherent.

§ 191.43 Acknowledgement.

The regional commissioner shall acknowledge in writing the receipt of the letter of acceptance of the manufacturer or producer of an offer for a general drawback contract. The general drawback contract for that manufacturer or producer shall be effective for a period of 15 years from the date of the letter of acknowledgement.

§ 191.44 Termination or renewal.

A general drawback contract shall terminate 15 years from the date of the letter of acknowledgement unless, prior to the expiration of the 15-year period, the manufacturer or producer requests the applicable regional commissioner to renew the contract for another 15-year period. A manufacturer or producer may terminate its contract at any time.

§ 191.45 Payment.

Drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and general drawback contract.

Subpart E—Evidence of Exportation

§ 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Notice of exportation, § 191.52;

(b) Exporter's summary, § 191.53;

(c) Certified notice of exportation for mail shipments, § 191.54;

(d) Notice of lading for supplies on certain vessels or aircraft, § 191.93, or

(e) Notice of transfer for articles manufactured or produced in U.S. which are transferred to a foreign trade zone, § 191.163.

§ 191.52 Notice of exportation.

(a) *Filing.* A drawback claimant may support the drawback claim with a notice of exportation on Customs Form 7511 for each shipment of merchandise covered by the claim.

(b) *Contents.* The notice of exportation shall show the:

(1) Name of exporting vessel or other carrier:

(2) Number and kinds of packages and their marks and numbers;

(3) Description of the merchandise, including its weight (gross and net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Country of ultimate destination.

(c) *Documentary evidence of exportation.* (1) *Notice of exportation certified by Customs at the time of exportation.* The exporter-claimant shall file simultaneously with appropriate Customs officer, Customs Form 7511 and the shipper's export declaration or the ocean/airway export bill of lading. The Customs officer shall review both forms and determine whether the information contained therein is accurate. Upon receipt of the outbound manifest, the Customs officer shall compare that document with Customs Form 7511 to verify the facts of exportation. Upon compliance with this procedure, the Customs officer shall certify Customs Form 7511; and return the certified copy and one uncertified copy of this document to the exporter-claimant.

(2) *Uncertified notice of exportation.* An uncertified notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill. Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter.

(d) *Numbering.* Prior to filing a notice of exportation with the drawback entry, the claimant shall assign to the notice a number which shall be stamped or endorsed on the original and each copy of the notice. The number assigned shall correspond to that of the supporting document, such as the bill of lading, air waybill, or cargo manifest, filed with the notice of exportation. If the supporting document covers more than one notice of exportation, the claimant shall assign to each notice the same number; but, each notice shall be further identified by an alphabetic designation beginning with the letter "A". It shall give a different alphabetic designation to each notice having the same number. If the supporting document has no number, it shall number consecutively each notice of exportation.

§ 191.53 Exporter's summary.

(a) *Eligibility.* This procedure shall be available to improve administrative efficiency.

(b) *Application.* The exporter-claimant shall request permission to use this procedure with the regional commissioner where the drawback claim will be filed, unless in cases of merchandise the subject of same condition drawback the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.

(c) *Approval.* The regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback, shall grant permission to use this procedure if he concludes that its use would contribute to administrative efficiency, and the exporter claimant is not delinquent or otherwise remiss in his transactions with Customs.

(d) *Bond.* The exporter-claimant shall furnish a bond on Customs Form 301, containing the bond conditions set forth in § 113.65 of this chapter, in such amount as the regional commissioner shall determine. [TD 84-213.]

(e) *Documentary evidence.*—(1) *Records.* The exporter-claimant shall maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported articles. The exporter shall retain these records for at least 3 years after payment of such claims.

(2) *Additional evidence.* The exporter-claimant shall support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall show also that the merchandise was exported in the same condition as when imported.

(3) *Format of chronological summary.* The chronological summary of the exports shall be in a format acceptable to the regional commissioner with whom drawback claims are filed and shall contain substantially the data provided for in the following sample format:

Chronological Summary of Exports

Drawback entry No. _____.
Exporter/claimant _____.
Period from _____ to _____.

Date of export	Exporting carrier	Freight or air waybill, bill of lading, manifest No. etc.[1]	Marks and numbers	Description	Net quantity	Schedule B No.	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

[1] This number is to be used to associate the claim with exportation evidence retained by claimant.

§ 191.54 Certified notice of exportation by mail.

(a)(1) *Procedure.* If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the exporter or his agent shall complete a notice of exportation on Customs Form 7511 in triplicate and file it with the postmaster at the place of mailing. The merchandise shall be delivered to the postmaster at the same time and mailed under his supervision.

(2) *Certification.* After the package is mailed, the postmaster shall certify one copy of the notice of exportation and return this copy and one uncertified copy to the exporter or his agent for subsequent filing with the drawback entry. The postmaster shall retain one copy as his record of the transaction.

(b) *Waiver of withdrawal.* A waiver of the right to withdraw a package from the mail shall be stamped or written on each package for export, signed by the exporter.

§ 191.55 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, or agency of the U.S. Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.52 or 191.53. No bond shall be required when the U.S. Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.73(b) of this part claims drawback, exportation shall be established under §§ 191.52 and 191.53.

§ 191.56 Amendment of evidence of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, the exporter or its agent may amend a notice of exportation or exporter's summary, provided the regional commissioner is satisfied that the amendment is complete and correct. A written request for amendment with supporting evidence shall be submitted to the regional commissioner where the drawback entry is filed.

§ 191.57 Examination of the merchandise.

The district director may examine any merchandise to be exported with drawback for any reason deemed appropriate.

Subpart F—Completion of Drawback Claims

§ 191.61 Time for filing.

A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, shall be filed or applied for, as

applicable, within 3 years after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required under § 191.67(d) of this part shall be filed within the time limit prescribed therein. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing.

§ 191.62 Filing procedure.

(a) *Manufacturing drawback entry and/or certificate.*—(1) *Customs Form 331.* The drawback claimant shall file with the appropriate district director the manufacturing drawback entry and/or certificate in duplicate on Customs Form 331, if claiming under 19 U.S.C. 1313(a) or (b). The district director may require an additional copy for administrative use.

(2) *Customs Form 331—Additional uses.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 331 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, he shall file the entry on Customs Form 331 and refer to the certificate of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 331. **[TD 86-118.]**

(3) *Filing in two or more regions.* If the drawback entry is filed in a region other than where the certificate of manufacture is on file, the regional commissioner with whom the certificate is on file, after liquidation and at the request of the person filing the certificate or to whom such merchandise was delivered, shall transmit to the regional commissioner where the entry is filed an extract on Customs Form 4537. The extract shall be considered an original certificate for liquidation purposes.

(4) *Two or more shipments.* One entry may cover several shipments.

(b) *Evidence of exportation.*—(1) *Notice of exportation.* When the entry covers exports under § 191.52(c)(2) of this part, the claimant shall file with the entry one copy of the notice of exportation and the original or a certified copy of the supporting document. For an entry under §§ 191.52(c)(1) and 191.54, the claimant shall file with the entry one copy of the notice of exportation.

(2) *Evidence of right to drawback.* The notice of exportation shall show that the merchandise was shipped by the person filing the drawback entry, or shall be endorsed by the person in whose name the merchandise was shipped showing that the person filing the entry is authorized to claim drawback and receive payment.

(3) *Chronological summary of exports.* For exports under § 191.53 of this part, the claimant shall file with the entry one copy of the chronological summary of exports.

(c) *Multiple claimants.*—(1) Notice of Exportation. Where more than one party claims drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), each drawback claimant shall file a separate notice of exportation describing the component product to which its claim will relate. Each notice shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component product. The exporter shall endorse the notices, as required, to show the respective interests of the claimants. The notice of exportation shall be numbered in accordance with § 191.52(d) of this part.

(2) *Exporter's summary procedure.* Where more than one party claims the drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), and the parties elect to use the exporter's summary procedure, each drawback claimant shall complete and file a chronological summary of exports for the respective component product to which its claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant or claimants and the component product for which each will claim drawback independently.

(d) *Vessels or aircraft.* For drawback under § 313(g), Tariff Act of 1930, as amended (19 U.S.C 1313(g)), the claimant shall file with the drawback entry a copy of the part of the construction contract showing that the vessel or aircraft was built for foreign account and ownership. In the case of a vessel, except a warship, the claimant also shall file a certificate of clearance for a foreign port and a certified copy of the registry certificate or, in its place, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the vessel has been documented under the flag of that country. No certificates of clearance or foreign documentation shall be required for a warship.

§ 191.63 Summary of papers filed.

The claimant may file with the drawback entry a summary, in duplicate, of the papers filed showing the date of application for official documents. When verified, one copy of the summary shall be receipted and returned to the claimant, and the other copy attached to the drawback entry.

§ 191.64 Supplementary filing.

With the permission of the regional commissioner, a claimant may amend or correct a drawback entry or file a timely supplemental entry. Corrections or amendments permitted shall be certified by the appropriate parties.

§ 191.65 Certificate of delivery.

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a manufacturing drawback entry and/or certificate in duplicate on Customs Form 331, or official evidence of the existence of the form filed at another place. The form must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the manufacturing drawback entry and/or certificate (Customs Form 331), certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for

drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a manufacturing drawback entry and/or certificate (Customs Form 331), showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No manufacturing drawback entry and/or certificate (Customs Form 331) is required covering prior transfers of merchandise while in a bonded warehouse. **[TD 86-118.]**

§ 191.66 Certificate of manufacture and delivery.

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a manufacturing drawback entry and/or certificate on Customs Form 331.

(b) *Subcontractors.* If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a manufacturing drawback entry and/or certificate (Customs Form 331). If there is no problem of identification, the subcontractor shall complete only the delivery section of the form. If complementary records are maintained by a subcontractor's principal (see § 191.22(d)), and Customs determines no problems of identification exist, it may waive the filing of Customs Form 331 for transfers between principal and subcontractor, whether the subcontractor's operation involves manufacture or not.

(c) *Identifying manufacturing drawback entry and/or certificates.* Drawback claimants may identify the relevant manufacturing drawback entry and/or certificates on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of intermediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the manufacturing drawback entry and/or certificate (Customs Form 331).

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the manufacturing drawback entry and/or certificate (Customs Form 331) is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537

(f) *Special requirements for agency transactions.*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 shall furnish the principal for whom it processed merchandise a manufacturing drawback entry and/or certificate (Customs Form 331) completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirements of principal.* The principal for whom processing was conducted under § 191.34 shall complete and file a manufacturing drawback entry and/or certificate (Customs Form 331) and attach to it the forms from its agents or agent. **[TD 86-118.]**

§ 191.67 Landing certificates.

(a) *When required.* A landing certificate shall be required:

(1) Whenever the district director at the port of exportation or the port where the drawback entry is filed, or the regional commissioner for the region where the drawback claim is liquidated, has reason to believe that the shipment is not a bona fide exportation;

(2) When Customs Headquarters specifically directs that the landing certificate be produced;

(3) When law or regulations otherwise requires a landing certificate; or

(4) For every aircraft which departs from the U.S. under its own power if drawback is claimed on the aircraft or any part thereof. A landing certificate for aircraft shall show the exact time of landing in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable Customs officers to identify them with the documentation used to establish exportation, such as the notice of exportation, bill of lading, air waybill, or other approved documentation.

(b) *Time of filing.* Any required landing certificate shall be furnished prior to the liquidation of the entry.

(c) *Signature.* Any required landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Notice of requirement.* Customs shall provide notice in writing to an exporter or its agent required to supply a landing certificate pursuant to paragraphs (a)(1) or (a)(2) of this section. The exporter or its agent shall file the landing certificate within 1 year from the date of the notice unless Customs Headquarters grants an extension.

(e) *Inability to produce landing certificates.* (1) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the regional commissioner through the district director within the time required for filing the certificate, accompanied by such evidence of clearance and landing abroad as may be available. The application shall be granted if the regional commissioner is satisfied by the evidence submitted that the merchandise has been exported. If the regional commissioner is not so satisfied, he shall transmit the application and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(2) *Required by the district director.* When a landing certificate is required by a district director under paragraph (a)(1) of this section, he may accept other satisfactory evidence of foreign landing in place of the certificate.

Subpart G—Payment and Liquidation of Drawback Claims

§ 191.71 Liquidation.

(a) *Time of liquidation.* Drawback claims may be liquidated after.

(1) Final liquidation of the import entry; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.*—(1) *Eligibility.* Drawback may be paid on estimated duties if the import entry has not been liquidated and the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback entry, waiving any right to payment or refund under other provisions of law.

(2) *Adjustment.*—(i) *Drawback entry.* A drawback claim, once liquidated on the basis of estimated duties, thereafter shall not be adjusted by reason of a subsequent liquidation of an import entry.

(ii) *Importer entry.* However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry or shall be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by the importer's written acceptance of the liquidation or by operation of law.

(d) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other necessary documents, and exportation of the articles has been established, the regional commissioner shall determine drawback due on the basis of the complete drawback claim and the drawback contract.

(e) *Distribution and value for multiple products.*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture and production of merchandise under drawback conditions shall be the market values unless another value is approved by Customs.

(f) *Payment.* The regional commissioner shall certify the amount of drawback due to the person making entry or other person authorized to receive payment under § 191.73 of this subpart.

§ 191.72 Accelerated payment.

(a) *Eligibility.* A drawback claimant not delinquent or otherwise remiss in transactions with Customs is eligible for accelerated payment of drawback on claims which are properly prepared and fully completed in accordance with either Subpart F or N of this part.

(b) *Submission with request.* A claimant who requests accelerated payment of a claim shall file with the claim a computation of the amount due, and, for approval by the regional commissioner, a bond on Customs Form 301, containing the bond conditions set forth in § 113.65 of this chapter. If outstanding unliquidated accelerated drawback claims exceed the estimated amount of accelerated drawback, the regional commissioner shall require additional bond coverage. **[TD 84-213.]**

(c) *Approval.* A regional commissioner who approves the claim for accelerated payment shall certify it for payment within 3 weeks after filing. After liquidation, the regional commissioner shall certify payment of any amount due or demand a refund of any excess amount paid.

(d) *Repeated erroneous computation of drawback claims.* Accelerated payment will be denied to claimants who repeatedly file claims in excess of the amount due.

§ 191.73 Person entitled to receive drawback.

(a) *Exporter; reservation by manufacturer or producer.* The person named as exporter on the notice of exportation or in bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies of these documents, shall be deemed to the exporter and entitled to drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter.

(b) *Agent or person designated to receive drawback.* Drawback may be paid to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive drawback payment.

Subpart H—Internal-Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (including Perfumery) Manufactured From Domestic Tax Paid Alcohol

§ 191.81 Drawback allowance.

(a) *Drawback.* Section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), provides for drawback of internal-revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the U.S. in part from the domestic tax-paid alcohol (see § 191.4(a)(4)).

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal-revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with § 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the U.S. and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.82 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's proposal.* The manufacturer's proposal shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content.*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved proposal, the manufacturer shall apply for a new drawback contract pursuant to § 191.25 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the regional commissioner where the drawback entries are liquidated. The regional commissioner may allow drawback without specific authorization from Customs Headquarters.

(e) *Customs form.* The Manufacturing Drawback Entry and/or Certificate (Customs Form 331) shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise. **[TD 86-118.]**

(f) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in § 191.61 of this part shall be applicable to claims for drawback under this subpart.

(g) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback entry covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal-revenue tax.

(h) *Description of the alcohol.* The description of the alcohol stated in the entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.83 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, or endorse on the entry or certificate of manufacture, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under §§ 5131, 5132, 5133, and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133, and 5134).

(b) *Manufacturer does not claim domestic drawback.*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Customs region where the drawback claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the Customs region designated, and retain the copy.

§ 191.84 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the regional commissioner of Customs, with whom the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs Form 331.* If the request is accompanied by Customs Form 331 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request. **[TD 86-118.]**

(d) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

§ 191.85 Liquidation.

The regional commissioner shall determine the amount of drawback due by reference to the certificate of manufacture and the drawback contract under which the drawback claimed is allowable.

§ 191.86 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.83 of this part shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under § 313(d) Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.83 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under § 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.71(f) of this part.

Subpart I—Supplies for Certain Vessels and Aircraft

§ 191.91 Drawback allowance.

Section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the U.S. or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft (see § 191.4(a)(10)).

§ 191.92 Procedure.

(a) *General.* Other provisions of this part apply to claims filed under this subpart insofar as applicable and not inconsistent with the provisions of this subpart.

(b) *Customs forms.* Drawback notices of lading on Customs Form 7514 shall be filed in place of notices of exportation on Customs Form 7511 or other evidence of exportation (see § 191.93).

§ 191.93 Drawback notice of lading.

(a) *Number of copies and place of filing.* The notice of lading on Customs Form 7514 shall be filed in quadruplicate with the district director at the port of lading.

(b) *Time of filing.* The drawback notice of lading may be filed either before or after lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(c) *Contents of notice. The notice of lading shall show:*

(1) Name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) Number and kind of packages and their marks and numbers;

(3) Description of the articles and their weight (net), gauge, measure, or number.

(4) Name of the exporter; and

(5) Customs region where the drawback entry is to be filed.

(d) *Assignment of numbers and return of one copy.* The district director shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(e) *Declaration.—(1) Requirement.* The master or an authorized officer of the vessel or aircraft, or a representative of the owner or operator of the vessel or aircraft having knowledge of the facts and holding a Customs power of attorney shall complete the section of the drawback notice entitled "Declaration of Master or Other Officer," which was delivered by the exporter.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the district director and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the district director both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the district director at the port of lading shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. He shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback entry.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the district director shall return to the exporter or the person designated by the exporter two copies of the notice with a statement of the facts in this case for subsequent filing with the drawback entry. The drawback claimant shall file with its claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The regional commissioner where the drawback claim is filed shall require a declaration or other evidence showing to his satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies.—(1) Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the regional commissioner a composite notice of lading on the reverse of Customs Form 7514, for each calendar month describing all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a

single port or airport to all vessels or airplanes of one vessel owner or operator or airline.

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse of Customs Form 7514 or on a continuation sheet:

(i) Identity of the vessel or aircraft;

(ii) Description of the fuel supplies laden;

(iii) Quantity laden; and

(iv) Date of lading.

(3) *Declaration of owner or operator.* A vessel or airline representative having knowledge of the facts and holding a Customs power of attorney shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(4) *District Director's certification.* The district director shall note the clearance of the vessel or aircraft at the end of each line relating to a voyage or flight.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel of commander of the aircraft desiring to land in the U.S. articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of § 309(c), Tariff Act of 1930, as amended (19 U.S.C. 1309(c)).

§ 191.94 Drawback entry.

The drawback entry shall be filed on Customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting." The "Declaration of Exportation" shall be amended to read as follows:

Declaration of Lading or Use

1. _____ (member of firm, officer representing corporation, agent, or attorney) of ___ _____ , declare that according to my knowledge and belief, the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that the merchandise is not to be relanded in the U.S. or any of its possessions, but is to be (has been) used on the vessels or aircraft so named for (state specifically, such as supplies, equipment, maintenance, or repair), as specified in § 309, Tariff Act of 1930, as amended.

Date _____ 19____

(Shipper or agent)

(Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309)

Subpart J—Meats Cured with Imported Salt

§ 191.101 Drawback allowance.

Section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt (see § 191.4(a)(6)).

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.103 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart K—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Accounts and Ownership

§ 191.111 Drawback allowance.

Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term (see § 191.4(a)(7)).

§ 191.112 Procedure.

Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.113 Explanation of terms.

(a) *Materials.* Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in § 313(g), Tariff Act of 1930, as amended, means only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart L—Foreign-Built Jet Aircraft Engines Processed in the U.S.

§ 191.121 Drawback allowance.

Section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the U.S. with the use of imported merchandise, including parts (see § 191.4(a)(8)).

§ 191.122 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.123 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7575–A, appropriately modified, to show that the entry

covers jet aircraft engines processed under § 313(h), Tariff Act of 1930, as amended.

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the U.S.

§ 191.124 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart M—Merchandise Exported From Continuous Customs Custody

§ 191.131 Drawback allowance.

(a) *General.* Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation (see § 191.4(a)(11)).

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557.)

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart. However, imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.132 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed because of the exportation of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in § 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.133 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the district director shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States.* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers. **[TDs 84–213, 89–1.]**

(c) *Merchandise released from warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the district director shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing or gauging.

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557.)

§ 191.134 Filing the entry.

(a) *Direct export.* At least 6 hours before lading the merchandise on which drawback is claimed, the importer or the agent designated by him in writing shall file with the district director a direct export entry on Customs Form 7512 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the district director an entry naming the transporting conveyance, route, and port of exit. The district director shall certify one copy and forward it to the district director at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.135 Merchandise withdrawn from warehouse for exportation.

The regulations in Part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.136 Bill of lading.

(a) *Filing.* In order to complete the claim, a bill of lading covering the merchandise described in the export entry shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall show either that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making claim is authorized to receive the drawback.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the regional commissioner, through the district director, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of its right to make the drawback entry as may be available. The request shall be granted if the regional commissioner is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the regional commissioner is not so satisfied, he shall transmit the request and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(e) *Extracts of bills of lading.* Regional commissioners may issue extracts from bills of lading filed with drawback entries.

§ 191.137 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.67 of this part.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

§ 191.138 Procedures.

When the drawback entry has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the regional commissioner shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback claims shall be liquidated in accordance with the provisions of §§ 191.61 and 191.71 of this part.

§ 191.139 Amount of drawback.

Drawback due under this subpart shall not be subject to the retention of 1 percent.

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

Subpart N—Same Condition and Rejected Merchandise Drawback

§ 191.141 Same condition drawback.

(a) *General Provisions.* (1) *Allowance.* Section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), provides for drawback on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the U.S. before such exportation or destruction (see § 191.4(a)(9)).

(2) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if exported or destroyed under paragraph (a)(1) of this section before the close of the 3-year period beginning on the date of importation.

(3) *Use.* The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes shall not be treated as a use of that merchandise for purposes of applying paragraph (a)(1) of this section.

(b) *Filing and documentation prior to exportation.* (1) *Filing.* An exporter claimant who desires to export merchandise with drawback under 19 U.S.C. 1313(j) shall file with the regional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. The exporter-claimant also shall furnish a copy of the import entry or identify the import entry, date of entry, and port of entry under which the merchandise was imported into the U.S. It shall certify that the merchandise is in the same condition as when imported and not used within the U.S. before such exportation. Transfers shall be documented by certificates of delivery (see § 191.65).

(2)(i) *Time of filing.* The completed Customs Form 7539 shall be filed with the regional commissioner or district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, at least 5 working days prior to the date of intended exportation of the merchandise, unless the Customs officer approves a shorter filing period.

(ii) *Waiver of prior notice of intent to export.* A request for a waiver of prior notice by an exporter-claimant shall be in writing to the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner. The appropriate Customs officer may waive prior notice at any time for any exporter-claimant. An exporter-claimant shall be granted this waiver after filing with the appropriate Customs official six consecutive claims free of substantial error, provided that such exporter-claimant has operated under the same condition program for a minimum of six months. An exporter-claimant who repeatedly files inaccurate claims may have the privilege (of filing without prior notice) revoked. Customs will so notify the exporter-claimant in writing of the revocation as soon as possible.

(3) *Examination.* (i) *Decision to examine.* Within 3 working days after Customs Form 7539 is filed, the exporter-claimant shall be notified whether customs will examine the merchandise. If exporter-claimant is not notified within the 3-day period, the exporter-claimant shall export the merchandise without delay.

(ii) *Time and place of examination.* If the appropriate Customs officer determines to examine the merchandise, he shall notify the exporter-claimant of the time and place of the examination. The examination shall be completed within 5 working days after the filing of Customs Form 7539, unless failure to examine during this period is caused by the exporter-claimant. If the examination is completed at a port other than the port of intended exportation, the exporter-claimant shall transport the merchandise in-bond to the port of exportation.

(iii) *Extent of examination.* The appropriate Customs officer may permit release of merchandise without examination, or may examine routinely (to the extent he determined necessary) items exported, provided such examinations do not exceed 10 percent of the total items exported (i.e., merchandise in one of ten claims could be examined). If the Customs officer believes it is necessary to examine more than 10 percent of the exported items, he shall present the reasons to Headquarters and obtain approval for such other examination.

(c) *Completion of drawback entry for exported merchandise.* Within 3 years after exportation of merchandise under

§ 191.141(b), an exporter-claimant shall complete his drawback claim by filing with the same Customs officer who received Customs Form 7539 evidence of exportation under the procedures described in § 191.52 (notice of exportation) or § 191.54 (certified notice of exportation by mail) of this part.

(d) *Alternative procedure for exported merchandise.* In place of the procedures set forth in §§ 191.141 (b) and (c), an exporter-claimant may apply with the regional commissioner, or the district (area) director, if authority has been delegated to that official by the regional commissioner, for permission to use the exporter's summary procedure (see § 191.53). If the request is approved, the exporter-claimant shall complete a drawback claim no later than 3 years after exportation. When this alternative procedure is used, no prior notice of intent to export or examination is necessary for purposes of obtaining drawback.

(e) *General.* The provisions relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. Specifically, §§ 191.22(b) and (c), and 191.65 are applicable to drawback under 19 U.S.C. 1313(j).

(f) *Drawback on destroyed merchandise.* (1) *Procedure.* A claimant desiring to destroy merchandise to collect drawback under same condition drawback shall file with the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. At least 7 working days prior to the intended date of destruction, the exporter—claimant shall notify the appropriate Customs officer of the time and place of destruction, by submitting Customs Form 3499 with Customs Form 7539 at the location wherein the destruction is to occur. It shall certify that the merchandise is in the same condition as when imported and not used within the U.S. before such destruction. Destruction of merchandise after such notification on Customs Form 3499 shall be deemed to have occurred under Customs supervision.

(2) *Completion of drawback entry.* After destruction, the claimant and district director or his designee who witnessed destruction shall certify on Customs Form 7539 or an attachment thereto the time and place of destruction.

(g) *Liquidation of the drawback claim.* (1) Entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

(2) Upon review of a drawback claim by the liquidator, if the claim is determined to be incomplete, the liquidator shall notify promptly the claimant, who shall then have the opportunity to amend the claim prior to its denial. The claimant shall respond in writing within 20 days of Customs notice.

(3) If the claim is denied, the claimant shall be notified in accordance with §§ 159.9 and 159.10 of this chapter.

(h) *Substitution same condition drawback.* If legal person X possesses imported merchandise (the designated merchandise) during some time interval in period A (defined below) and also possesses other merchandise fungible with it (the substituted merchandise) during the same or different time interval in period A, then 99 percent of the duty paid on the designated merchandise will be refunded as drawback, provided that:

(1) The designated merchandise was in the same condition as imported either at the time of substitution, the time X used it in manufacturing, or at the time X transferred it to another person, whichever occurs first;

(2) The substituted merchandise is in the same condition when exported or destroyed under Customs supervision as was the designated merchandise when imported;

(3) X does not issue a certificate of delivery covering the designated merchandise nor a certificate of manufacture and delivery covering articles manufactured or produced therefrom; and

(4) X maintains records to establish requirements, (1), (2), and (3) of this section and also complies with all relevant requirements of §§ 191.141 (a) through (g) of this chapter.

Period A (referred to above) begins when X receives the merchandise and ends three years after the importation of said merchandise. [TD 85-123.]

§ 191.142 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *General.* (1) Section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee. The merchandise must be returned to Customs custody for exportation within 90 days after release from Customs custody unless Customs authorizes a longer period (see § 191.4(a)(3)).

(2) Rejected merchandise may be the subject of a same condition drawback claim in accordance with § 191.141(a)-(f).

(b) *Procedure.* (1) The exporter-claimant shall file with any district director a drawback entry on Customs Form 7539 at the time the merchandise is returned to Customs custody.

(2) The exporter-claimant also shall submit documentation to establish that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(3) The district director shall approve the place of delivery of the merchandise if he is satisfied that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(4) The exporter-claimant shall return the merchandise to Customs custody within 90 days after the date the merchandise was originally released from Customs custody unless an extension of time is specifically authorized in writing by the district director or other appropriate Customs official. A reasonable extension of time will be granted if the failure to comply with the 90 day provision is beyond the control of the applicant. Drawback shall be denied on merchandise returned to Customs custody after the authorized time period, including any extension.

(5) The exporter-claimant shall export the merchandise under Customs supervision and shall provide proof of exportation by filing with the same district director who received the Customs Form 7539 a notice of exportation certified by a Customs officer under § 191.52(c)(1), or otherwise supported by those documents set out in § 191.52(c)(2) except that if a bill of lading is submitted proving exportation, no notice of exportation shall be required. The exporter-claimant also may establish exportation by mail as set out in § 191.154.

(6) Drawback under this section is payable to the exporter-claimant who is the importer of record or the actual owner named in the import entry. The procedures for liquidating a drawback claim shall be the same as under § 191.141(g).

Subpart O—Distilled Spirits, Wines, or Beers Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.151 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody (see § 191.4(b)).

§ 191.152 Procedure.

The export procedure shall be the same as that provided in § 191.142(b) except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.153 Documentation.

(a) *Entry.* Customs Form 7539, appropriately modified, shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the district director requires to establish that the merchandise is unmerchantable.

§ 191.154 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.155 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.156 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7539.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the district director where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§ 191.157 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing claims under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.158 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, the district director grants an extension of not more than 90 days.

Subpart P—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.161 Drawback allowance.

The fourth provision of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c) provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, provided there is compliance with the regulations of this subpart (see § 191.4(a)(12)).

§ 191.162 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.161 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter). **[TD 86-16.]**

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.163 Articles manufactured or produced in the U.S.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the U.S. with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer.*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart E to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the district director where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number;

(iv) Name of the transferor, and

(v) Place where the drawback entry is to be filed.

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator at the

zone shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.164(d)(2) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry. [TD 86-16]

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 7573, 7575, 7579, or 7585, as applicable, appropriately modified, to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, _____ (member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the U.S. for domestic consumption.

Dated: _____,

_____,

Transferor or agent.

(Sec. 3, 48 Stat. 999, as amended, 19 U.S.C. 81c)

§ 191.164 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in Subpart M of this part shall be followed as applicable, to drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136. [TD 86-16]

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7512 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7512 as follows, for execution by the foreign trade zone operator.

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 19____; in Foreign Trade Zone No. _____, _____ (City and State) Exceptions: _____, _____

(Name and title)

By _____ (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7512 as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the U.S. for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:

_____ (Transferor)

(Sec. 3, Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *Procedure for filing claims.* The procedures described in § 191.141, relating to same condition drawback merchandise, and § 191.142 relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for same condition drawback merchandise and merchandise not conforming to sample or specifications, or merchandise shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7539 to the district director in place of the bill of lading required by § 191.136. [TD 86-16.]

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7539 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 19____, in Foreign Trade Zone No. _____, _____ (City and State).

Exceptions: _____.

_____ (Name of operator)

By _____ (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7539 as follows:

Transferor's Declaration

I, _____, of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the U.S. for domestic consumption. I further declare that to the best of my knowledge and belief, that said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____.

_____ (Transferor)

(Sec 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.166 Person entitled to receive drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback shall be paid to the transferor or to the person to whom the transferor directs in writing to be paid.

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c) [TD 83-212.]

This table shows the relation of revised §§ 10.151 through 10.153 to superseded 19 CFR Part 8, and revised §§ 10.161 through 10.166 to superseded 19 CFR Part 16.

Revised Sections	Superseded Section
10.151	8.3(b)
10.152	8.3(c)
10.153(a)–(g)	8.3(d)
10.161	16.26(c)
10.162	16.26(c)
10.163	16.26(b)
10.164(a)–(c)	16.26(d)(1)–(3)
10.165	16.26(d)(4)
10.166(a)–(c)	16.26(d)(5)

This table shows the relation of revised Part 101 to superseded 19 CFR Part 1.

Revised Part 101 Section	Superseded 19 CFR Section
101.0	New
101.1(a)	New
101.1(b)	1.2(a)
101.1(c)	1.2(a)
101.1(d)	1.3(a), ftn. 5
101.1(e)	New
101.1(f)	1.11
101.1(g)	1.11
101.1(h)	1.11
101.1(i)	1.11
101.1(j)	1.11
101.1(k)	1.11
101.1(l)	1.2(b), ftn. 2
101.1(m)	New
101.2(a)	1.1(a), (b)
101.2(b)	1.1(c)
101.3(a)	Ftn. 1 to 1.2(b)
101.3(b)	1.2(c)
101.4(a)	1.3(b)
101.4(b)	1.3(b) and (c)
101.4(c)	1.3(d)
101.4(d)	Ftn. 7 to 1.3(d)
101.5	1.4
101.6(a)	1.7(a), ftn. 10
101.6(b)	1.7(b)
101.6(c)	1.7(c)
101.6(d)	1.7(d)
101.6(e)	1.7(e)
101.6(f)	1.7(f)
101.6(g)	1.7(g)
101.7(a)	1.8(a)
101.7(b)	1.8(a)
101.7(b)(1)	1.8(b)
101.7(b)(2)	1.8(b) and (c)
101.8	1.9

This table shows the relation of the old sections of Part 1 to the new sections in revised Part 101.

Old Section	New Section
1.1(a)	101.2(a)
1.1(b)	101.2(a)
1.1(c)	101.2(b)
1.1(d)	None
1.1(e)	None
1.2(a)	101.1(b), (c)
1.2(b)	101.1(d)
footnote 1	101.3(a)
footnote 2	101.1(1)
1.2(c)	101.3(b)
footnote 3	101.3(b)
1.3(a)	101.1(d)
footnote 5	101.1(d)
1.3(b)	101.4(a), (b)
footnote 6	None
1.3(c)	101.4(b)
1.3(d)	101.4(c)
footnote 7	101.4(d)
1.4	101.5
1.4(a)	None
1.5	None
1.6	None
1.7(a)	101.6(a)
footnote 10	101.6(a)
1.7(b)	101.6(b)
1.7(c)	101.6(c)
1.7(d)	101.6(d)
1.7(e)	101.6(e)
1.7(f)	101.6(f)
1.7(g)	101.6(g)
1.8(a)	101.7(a), (b)
1.8(b)	101.7(b)(1), (2)
1.8(c)	101.7(b)(2)
1.9	101.8
1.10	None
1.11	101.1(f)–(k)

(This table shows the relation of sections in Revised Part 103 to Superseded Part 103)

Revised Section	Superseded Section
103.0	103.0
103.1	103.1
103.2(a)	New
103.2(b)	New
103.3(a)	New
103.3(b)	New
103.4(a)	New
103.4(b)	New
103.4(c)	New
103.4(d)	103.4(b) New
103.4(e)	New
103.5(a)	103.2(b), (c), and (d) New
103.5(b)	103.2(e) New
103.5(c)	103.2(b) and (c) New
103.5(d)	103.2(a) New
103.5(e)	103.2(d) New
103.5(f)	New
103.5(g)	New
103.5(h)	103.5(c)
103.6(a)	103.2(f), 103.3(a)
103.6(b)	New
103.6(c)	New
103.6(d)	New
103.6(e)	103.4(d) New
103.7(a)	103.5(a) New
103.7(b)	New
103.7(c)	103.5(b) & (c) New
103.8(a)	New
103.8(b)	New

Revised Section	Superseded Section
103.9(a)	New
103.9(b)	103.4(c)(2) New
103.9(c)	New
103.10(a)	New
103.10(b)	103.9(b) New
103.10(c)	New
103.10(d)	New
103.10(e)	New
103.10(f)	New
103.10(g)	103.9(b) New
103.11(a)	103.7
103.11(b)	103.8(a) and (b)
103.12(a)	103.10(a) New
103.12(b)	103.10(b) New
103.12(c)	New
103.12(d)	103.10(d)
103.12(e)	103.10(e)
103.12(f)	103.10(f)
103.12(g)	103.10(g) New
103.13(a)	New
103.13(b)	New
103.14(a)	103.11(a)
103.14(b)	103.11(b)
103.14(c)	103.11(c)
103.14(d)	103.11(d)
103.15(a)	103.12
103.15(b)	New
103.16	103.13
103.17(a)	103.14(a)
103.17(b)	103.14(b)
103.17(c)	103.14(c)
103.17(d)	New

This table shows the relation of the old sections of Part 103 to the new sections in Part 103.

Old Section	New Section
103.0	103.0
103.1	103.1
103.2(a)	103.5(d), 103.6(a)
103.2(b)–(d)	103.5(a) (c), (e)
103.2(e)	103.5(b)
103.2(f)	103.6(a)
103.4(b)	103.4(d)
103.4(c)(2)	103.9(b)
103.4(d)	103.6(e)
103.5(a)	103.7(a)
103.5(b), (c)	103.7(c)
103.6(a), (b)	Deleted
103.6(c)	103.5(h)
103.7	103.11(a)
103.8(a), (b)	103.11(b)

Old Section	New Section
103.9(b)	103.10(b), 103.10(g)
103.9(c)	103.10(c)
103.10(a)	103.12(a)
103.10(b)	103.12(b)
103.10(d)	103.12(d)
103.10(e)	103.12(e)
103.10(f)	103.12(f)
103.10(g)	103.12(g)
103.11(a)	103.14(a)
103.11(b)	103.14(b)
103.11(c)	103.14(c)
103.11(d)	103.14(d)
103.12	103.15(a)
103.13	103.16
103.14(a)–(c)	103.17(a)–(c)

This table shows the relation of sections in revised Part 112 to 19 CFR Parts 18, 21, 24, and 25.

Revised Section	Superseded Section
112.0	New
112.1	New
112.2	18.1(c)(1); 21.1(a)
112.11	18.1
112.12	18.1(a) & (d) 24.12; 25.4(a)(35)
112.13	New
112.14	18.1(f)
112.15	New
112.21	21.1(a)
112.22(a) & (b)	21.1(a) & (b)
112.23	New
112.24	New
112.25	21.1(a)
112.26	21.1(a)
112.27	21.1(c)
112.28	21.6
112.29	21.6(a)
112.30(a)(1)–(6)	21.6(b)
112.30(a)(7) & (8)	21.1(a)
112.30(a)(9)	21.8(a)
112.30(a)(10)	21.1
112.30(b) & (c)	21.6(c)
112.30(d)	21.6(d)
112.41	21.2(a)(d)
112.42	21.2(b)
112.43	21.2(c) & (d)
112.44	21.2(f)
112.45	21.2(g)
112.46	21.2(h)
112.47	21.2(e)
112.48(a)–(e)	21.2a(a)–(c)
112.49	New

This table shows the relation of sections in revised Part 113 to superseded 19 CFR Part 25.

Revised Section	Superseded Section
113.0	None
113.1	None
113.2 and 113.3	None
113.11	25.1
113.12	25.1
113.13(a)(1)	25.3(a)(1)
113.13(a)(2)	25.3(a)(3)
113.13(b)	New
113.14(a)	25.4(a)(2)
113.14(b)(1)	25.4(a)(1)(i)
113.14(b)(2)	25.4(a)(1)(ii)
113.14(c)	25.4(a)(3)
113.14(d)	25.4(a)(4)
113.14(e)(1)	25.4(a)(5)
113.14(e)(2)	25.4(a)(6)
113.14(f)(1)	25.4(a)(7)
113.14(f)(2)	25.4(a)(8)
113.14(g)(1)	25.4(a)(9)
113.14(g)(2)	25.4(a)(10)
113.14(h)	25.4(a)(11)
113.14(i)(1)	25.4(a)(12)
113.14.(i)(2)	25.4(a)(13)
113.14(j)	25.4(a)(14)
113.14(k)(1)	25.4(a)(15)
113.14(k)(2)	25.4(a)(16)
113.14(l)	25.4(a)(17)
113.14(m)(1)	25.4(a)(18)
113.14(m)(2)	25.4(a)(19)
113.14(n)	25.4(a)(21)
113.14(o)	25.4(a)(22)
113.14(p)	25.4(a)(34)
113.14(q)	25.4(a)(23)
113.14(r)	25.4(a)(24)
113.14(s)	25.4(a)(25)
113.14(t)(1)	25.4(a)(26)
113.14(t)(2)	25.4(a)(27)
113.14(u)	25.4(a)(33)
113.14(v)	25.4(a)(28)
113.14(w)	25.4(a)(35)
113.14(x)(1)–(2)	New
113.14(y)	New
113.14(z)	25.4(a)(29)
113.14(aa)	25.4(a)(30)
113.14(bb)	25.4(a)(32)
113.14(cc)–(gg)	New
113.15	None
113.16	25.4(b)
113.17	25.4(c)
113.18	25.4(a)
113.21(a)	25.5(a) and 25.8(a)
113.21(b)	25.5(c)
113.21(c)	25.4(b)
113.21(d)	25.4(b)
113.21(e)	25.4(b)
113.22(a)	25.5(a)
113.22(b)	25.5(b)
113.22(c)	25.5(a)
113.23(a)	None
113.23(b)	25.5(d)
113.23(c)	25.5(d)
113.23(d) and (e)	None
113.24(a)	25.6(a)
113.24(b)	25.6(b)
113.25	25.5(c)
113.26(a)	25.2(a)
113.26(b)	25.2(b)
113.26(c) and (d)	25.2(b)
113.27	25.3(b)
113.31	None
113.32(a)	25.13
113.32(b)	25.13
113.33(a)	25.7(b)
113.33(b)	25.7(a)
113.33(c)	None
113.34(a)	25.8(d)
113.34(b)	25.8(a)
113.34(c)	25.8(a), 25.5(a) and 25.8(b)

Revised Section	Superseded Section
113.34(d)	25.8(c)
113.35(a)	25.9(a)
113.35(b)	25.9(a), 25.9(e), 25.9(f), and 25.9(b)
113.35(c)	25.9(a)
113.35(d)	25.9(c)
113.35(e)	25.9(d)
113.36	25.11
113.37(a)	25.12(a)
113.37(b)	25.8(d)
113.37(c)	None
113.37(d)	25.8(a)
113.37(e)	25.12(b)
113.37(f)	25.12(c) and 25.12(d)
113.38(a)	25.10(a)
113.38(b)	25.10(b)
113.39(a)	25.14
113.39(b)	25.14
113.39(c)	25.14
113.41	25.16(a)
113.42	25.16(c)
113.43(a)	25.18(a)
113.43(b) and (c)	25.18(c)
113.44(a)	25.18(d)
113.44(b)	25.18(d)
113.45	25.16(b)
113.46	None
113.51	None
113.52	25.15(e)
113.53(a)	25.17(f)
113.53(b)	25.17(f)
113.54(a)	None
113.54(b)	None
113.55(a)	Footnote 5
113.55(b) and (c)	25.15(a)
113.55(d)	25.15(b), 25.15(a), and 25.15(c)
113.55(e)	25.15(d)
113.61(a)	25.4(a)(35)
113.61(b)	25.4(a)(35)
113.62(a)	25.4(a)(25)
113.62(b)	25.4(a)(25)

This table shows the relationship of sections in revised Part 122 to superseded Part 6

Revised Section	Superseded Section
122.0	New.
122.1(a)	New.
122.1(b)	6.1(e).
122.1(c)	6.1(g).
122.1(d)	New.
122.1(e)	6.1(h).
122.1(f)	New.
122.1(g)	Based on 19 CFR 24.18.
122.1(h)	New.
122.1(i)	New.
122.1(j)	New.
122.1(k)	6.1(f).
122.1(l)	6.1(b), (c).
122.2	6.10.
122.3	6.6(b).
122.4	6.6(a).
122.5	6.6(a).
122.11(a)	6.12(a), (b), (d).
122.11(b)	6.12(c).
122.11(c)	6.12(e).
122.12(a)	6.12(f).
122.12(b)	6.12(g).
122.12(c)	6.12(h).
122.12(d)	6.12(i).
122.13	6.13.
122.14	6.12a.
122.21	New.
122.22	New.
122.23(a)	New.
122.23(b), (c), (d), (e)	6.14(a).
122.24(a), (b)	6.14(b), (g).
122.25(a), (b), (c), (d)	6.14(f).
122.26	New.
122.27	Based on 19 CFR 148.5.
122.28	Based on 19 CFR 148.32.
122.29	New.
122.30	6.10 and 6.11.
122.31(a)	6.2(b)(1).
122.31(b)	6.2(b)(3).
122.31(c)(2)	6.2(b)(2).
122.31(d)	6.2(b)(4).
122.31(e)	6.2(b)(5).
122.31(f)	6.2(b)(1).
122.32	6.2(a).
122.33	6.2(a).
122.34	6.2(a).
122.35	6.2(h).
122.36	6.2(b)(6).
122.37	6.2(h).
122.38(a)	6.2(e), (f).
122.38(b)	6.2(e), (f).
122.38(c)	6.2(g).
122.38(d)	6.2(e), (f).
122.38(e)	6.2(g).
122.38(f)	New. Based on Customs Circular INS-2-EV, dated 12-14-61.
122.41	6.3(a), 6.4(a), (b) and 6.9(c).
122.42	6.3(b), 6.4(c), and 6.7.
122.43(a), (c)	6.7(a), (b).
122.43(b)	New. Based on Customs Circular AIR-4-ICS, dated 1-24-68.

Revised Section	Superseded Section
122.44	New. Based on Customs Circular BAG-3-CO (AIR-4-AIR), dated 8-9-65.
122.45	6.7(b)(1).
122.45(d)	New. Based on Customs Circular BAG-3-CO (AIR-4-AIR), dated 8-9-65.
122.46(a)	6.7(b)(2).
122.46(b)	6.7(b)(2). Also based on Customs Circular AIR-4-ICS, dated 1-24-68.
122.46(c)	6.7(b)(2).
122.47(a)	6.7(f).
122.47(b)	6.7(f).
122.47(c)(1)	6.7(b)(3)(v).
122.47(c)(2)	6.7(b)(3)(v), (vi).
122.47(d)	6.7(f).
122.48(a), (b), (c), (d)	6.7(b)(3).
122.48(e)	New. Based on Customs Circular ATR-7-IEI, dated 1-31-72.
122.49(a)	6.7(h)(1), (2).
122.49(b), (c), (d), (e), (f)	6.7(h)(1), (3). Also based on 19 CFR 4.12(a).
122.51	6.2(d)(3).
122.52(a), (b), (c)	6.2(d)(3).
122.52(d)	6.2(d)(3)(ii). Also based on T.D. 55063(1), dated 3-4-60.
122.53	New. Based on 14 CFR 121.153.
122.54(a), (b), (c), (d), (e), (f)	6.2(d)(1).
122.54(g)	6.2(d)(2).
122.61(a)	6.3(c).
122.62(a), (b), (c)	6.3(c).
122.63(a), (b)	6.5(c).
122.64	6.3(d).
122.65	New.
122.71	6.8(a).
122.72	6.8(a).
122.73	6.8(b). Also based on T.D. 82-92, dated March 22, 1982.
122.74(a)	6.8(a). Also based on 15 CFR 30.24.
122.74(b)	6.8(a).
122.74(c)	6.8(a). Also based on 15 CFR 30.24(a).
122.74(c)(1)	6.8(a). Also based on 15 CFR 30.24(a).
122.74(c)(2)	6.8(e). Also based on 15 CFR 30.24(a)(1).
122.74(c)(3)	6.8(a). Also based on 15 CFR 30.24(a)(1).
122.74(d)	6.8(e).
122.75(a)(1), (2)	6.8(e). Also based on 15 CFR 30.21(b).
122.75(b)	6.8(e).
122.76	6.8(a). Also based on 15 CFR 30.1.
122.77	6.8(d).
122.78	6.8(c).
122.79(a), (b)	6.3(c) and 6.5(b).
122.80	6.8(e).
122.81	6.9(a).
122.82	6.9(a). Also based on 19 CFR 4.85(a), 19 CFR 113.13a(a), (b) and 19 CFR 113.61.
122.83(a), (b), (c), (d)	6.9(b).
122.83(e)	6.9.
122.83(f)	6.9(b).
122.84(a), (b), (c), (d)	6.9(c).
122.85	6.9(d).
122.86	New. Based on Customs Circular AIR-7-EV, dated 11-23-59.
122.87	6.9(e).
122.88	6.9(f).
122.91	6.15(a).
122.92(a), (b)	6.15(b)(1), (2).
122.92(c)	6.15(b)(3).
122.92(d)	6.15(b)(4).
122.92(e)	6.15(b)(5).
122.92(f), (g)	6.15(b)(6).
122.93(a)	6.15(c).
122.93(b)	6.15.
122.94(a), (b)	6.16.
122.95	6.15(a).
122.101	New. Based on Customs Circular AIR-7-IEI, dated 1-31-72.
122.102	New. Based on Customs Circular AIR-7-IEI, dated 1-31-72.
122.111	6.17.
122.112(a), (b), (c)	6.17.
122.112(d)	6.18(a).
122.113	6.18(a).
122.114(a)	6.18(a). Also based on Customs Circular AIR-7-EV, dated 5-8-62.
122.114(b)	6.18(b).
122.114(b)(2)	6.18(b).
122.114(c)	6.18(d).
122.114(d)	New. Based on Customs Circular AIR-7-EV, dated 5-8-62.

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Revised Section	Superseded Section
122.115	6.18(e). Also based on Customs Circular AIR-7-EV, dated 5-8-62.
122.116	6.19.
122.117(a)	6.20(c).
122.117(b)	6.20(b), (d).
122.117(c), (d)	6.20(c).
122.118(a)	6.24(a).
122.118(b)	6.21(c).
122.118(c)	6.24(b), (c).
122.118(d)	6.24(g).
122.118(e)	New. Based on 19 CFR 18.25.
122.118(f)	New. Based on Customs Circular AIR-7-CO, dated 3-17-65.
122.118(g)	6.24(d).
122.119(a)	6.22(a).
122.119(b)	6.21(a).
122.119(c)	6.22(a). Also based on Customs Circular TRA-1-IMS, dated 7-15-68.
122.119(d)	6.22(c), (d).
122.119(e)	6.22(a).
122.120(a)	6.23(a).
122.120(b)(1)	6.23(a).
122.120(b)(2)	6.23(c).
122.120(c)	6.21(b).
122.120(d)	6.23.
122.120(e)	6.23(b).
122.120(f)	6.23(c).
122.120(g)	6.23(e).
122.120(h)	6.23(d).
122.120(i), (j)	6.23(h).
122.120(k)	6.23(g).
122.131 through 122.137	New. Based on Customs Circular AIR-7-AIR, dated 6-16-64.
122.141	New definition section.
122.142	6.25(a).
122.143	6.25(b).
122.144(a)(1)	6.25(c)(1).
122.144(a)(2)	6.25(c)(2).
122.144(b)	6.25(c)(3).
122.144(c)	6.25(c)(4).
122.151 through 122.158	6.3a.
122.161	6.11.
122.162	6.7(h).
122.163	6.22(e).
122.164	6.23(g).
122.165	New. Based on Customs Circular AIR-4-CR, dated 11-12-72.
122.166	New. Based on 19 U.S.C. 1433 and 1436.
122.167	New. Based on 19 U.S.C. 1433 and 1436.

This table shows the relationship of sections in Part 6 to revised Part 122

Revised Section	Superseded Section
6.1 (b), (c)	122.1(l).
6.1(e)	122.1(b).
6.1(f)	122.1(k).
6.1(g)	122.1(c).
6.1(h)	122.1(e).
6.2(a)	122.32, 122.33, 122.34.
6.2(b)	122.31.
6.2(b)(6)	122.36.
6.2(d)(1)	122.54 (a) through (f).
6.2(d)(2)	122.54(g).
6.2(d)(3)	122.51 and 122.52.
6.2 (e), (f)	122.38 (a), (b), (d), (e) and (f).
6.2(g)	122.38(c).
6.2(h)	122.35 and 122.37.
6.3(a)	122.41.
6.3(b)	122.42 (a), (b).
6.3(c)	122.61(a), 122.62 (a), (b), (c) and 122.79(a).
6.3(d)	122.64.
6.3a	122.151 through 122.158.
6.4 (a) and (b)	122.41.
6.4(c)	122.42(b).
6.5 (b), (c)	122.63 (a), (b) and 122.79(b).
6.6(a)	122.4 and 122.5.
6.6(b)	122.3.
6.7(a)	122.43(a).
6.7(b)	122.43(c), 122.45, 122.46 (a), (b), (c) and 122.47(c).
6.7(f)	122.47 (a), (b), and (d).
6.7(h)	122.49, and 122.162.
6.8(a)	122.71, 122.72, 122.74 (a), (b), and (c) (1) and (3) and 122.76.
6.8(b)	122.73.
6.8(c)	122.78.
6.8(d)	122.77.

Revised Section	Superseded Section
6.8(e)	122.74(c)(2), 122.74(d), 122.75(a), (1) and (2), 122.75(b) and 122.80.
6.9(a)	122.81 and 122.82.
6.9(b)	122.83.
6.9(c)	122.84.
6.9(d)	122.85.
6.9(e)	122.87.
6.9(f)	122.88.
6.10	122.2, 122.30 and 122.161.
6.11	122.161.
6.12 (a), (b), (d)	122.11(a).
6.12(c)	122.11(b).
6.12(e)	122.11(c).
6.12 (f), (g), (h), (i)	122.12.
6.12a	122.14.
6.13	122.13.
6.14(a)	122.23 (b), (c), (d), (e).
6.14 (b), (g)	122.24 (a), (b).
6.14(f)	122.25.
6.15(a)	122.91 and 122.95.
6.15(b)	122.92.
6.15(c)	122.93.
6.16	122.94.
6.17	122.111 and 122.112 (a), (b), (c).
6.18(a)	122.112(d), 122.113, and 122.114(a).
6.18(b)	122.114(b).
6.18(d)	122.114(c).
6.18(e)	122.114(e).
6.19	122.116.
6.20 (b), (d)	122.117(b).
6.20(c)	122.117 (a), (c), and (d).
6.21(a)	122.119(b).
6.21(b)	122.120(c).
6.21(c)	122.118(b).
6.22(a)	122.119 (a), (c), and (e).
6.22 (c), (d)	122.119(d).
6.22(e)	122.163.
6.23(a)	122.120 (a) and (b)(1).
6.23(b)	122.120(e).
6.23(c)	122.120 (b)(2) and (f).
6.23(d)	122.120(h).
6.23(e)	122.120(g).
6.23(g)	122.120(k) and 122.164.
6.23(h)	122.120 (i), (j).
6.24(a)	122.118(a).
6.24 (b), (c)	122.118(c).
6.24(d)	122.118(g).
6.24(g)	122.118(d).
6.25(a)	122.142.
6.25(b)	122.143.
6.25(c)(1)	122.144(a)(1).
6.25(c)(2)	122.144(a)(2).
6.25(c)(3)	122.144(b).
6.25(c)(4)	122.144(c).
6.25(c)(5)	122.144(d).

This table shows the relation of sections in revised Part 123 to superseded 19 CFR Part 5.

Revised Section	Superseded Section
123.0	None
123.1(a)	5.1(b)
123.1(b)	5.1(a)
123.1(c)	5.1(a)
123.2	5.1(d)
123.3	5.1(a) & (b)
123.4	5.1(b) & (c)
123.5	5.1(a) & (b)
123.6	None
123.7	5.1(b)
123.8(a)	5.2(a) & (b)
123.8(b)	5.2(b)
123.8(c)	5.2(c)
123.8(d)	5.2(d)
123.11(a)	5.7(a)
123.11(b)	5.7(b), (c), (d) & (e)
123.11(c)	5.7(f)
123.12	5.12(a)
123.13	5.12(b)
123.14	10.41(b) and (d)
123.15	10.41(g)
123.16	10.42(f)
123.17	10.42(g)
123.18	10.41(e)
123.21(a)	5.8(a), 5.10(f), (g) & (h)
123.21(b)	None
123.21(c)	None
123.22(a)	5.8(e) & (g)
123.22(b)	5.8(e)
123.22(c)	None
123.22(d)	5.8(d)
123.22(d)(1)	5.8(b)
123.22(d)(2)	5.8(e)
123.22(d)(3)	5.8(b)
123.23	5.8(f)
123.24(a)	5.8(b) & (c)
123.24(b)	5.8(g)
123.24(c)	5.8(g)
123.25(a)	5.8(b) & (g)
123.25(b)	5.8(h)
123.26(a)	5.9(a), 5.10(f)
123.26(b)	5.9(d)
123.26(c)	5.9(b)
123.27	5.9(c)
123.28(a)	5.10(b)

Revised Section	Superseded Section
123.28(b)	18.28
123.29(a)	5.10(c)(1) & (h)
123.29(b)	5.10(d), 5.10(c)(2)
123.29(c)	5.10(e) & (f)
123.29(d)	5.10(g)
123.29(e)	5.10(f)
123.31(a)	None
123.31(b)	5.11(a)
123.32	5.11(a)(1) & (2)
123.33	5.11(b)
123.34	5.11(d), 5.1(c)
123.41	None
123.42	None
123.51	18.15(e)
123.52	5.11(c)
123.61	5.1(b)
123.62	5.1(b)
123.63	5.4
123.64	5.11(a)
123.65(a)	18.15(a) & (d)
123.65(b)	18.15(a)
123.65(c)	18.15(b)
123.65(d)	18.15(c)
123.71	5.15
123.72	5.13, 10.42(e)

This table shows the relation of sections in revised Part 125 to 19 CFR Part 21.

Revised Section	Superseded Section
125.0	New
125.1	21.3
125.2	21.7(a)
125.3	21.4(a)
125.11(a)–(c)	21.4(a)
125.12	21.4(b)
125.13	21.4(c)
125.14	21.4(d)
125.21	21.5(a) & (b)
125.22	21.5(c)
125.23	21.5(d)
125.24	21.7(b)
125.31	New, 21.9
125.32	21.9(a)
125.33	21.9(a) & (b)
125.34	21.9(a) & (b)
125.35	21.9(b)
125.36	21.10
125.41	21.8(a)
125.42	21.8(c)

This table shows the relation of sections in revised Part 127 to superseded 19 CFR Parts 20, 24, and 56.

Revised Section	Superseded Section
127.0	New
127.1(a)–(e)	New
127.2(a)–(b)	20.2(a)
127.2(c)	20.2(b)
127.3(a)	56.1(a)
127.3(b)	56.1(a), 56.2(c)
127.3(c)	56.2(a)
127.3(d)	56.3(a)
127.3(e)	56.2(b)
127.3(f)	56.2(d)
127.11	New
127.12(a)–(b)	New
127.13(a)	20.1(a)
127.13(b)	20.1(c)
127.14(a)	20.3(a)
127.14(b)	20.3(b)
127.14(c)	20.3(c)
127.21	20.5(a)
127.22	20.5(d)
127.23	20.5(b)
127.24	20.5(j)
127.25(a)	20.5(e)
127.25(b)	20.5(h)
127.26	20.5(i)
127.27	20.5(a)
127.28(a)	20.5(c)
127.28(b)	New
127.28(c)	20.5(f)
127.28(d)	20.5(g)
127.28(e)	20.4
127.28(f)	New
127.28(g)	20.4
127.28(h)	20.5(g)
127.29	20.5(k)
127.31	20.6(a)
127.32	20.6(b)
127.33	20.6(c)
127.34	20.6(d)
127.35	20.6(e)
127.36	20.6(f) & (g); 24.25
127.37(a)	20.6(h)
127.37(b)	20.6(i)

This table shows the relation of sections in revised Part 132 to superseded 19 CFR Part 12.

Revised Section	Superseded Section
132.0	New
132.1(a)–(g)	New
132.2(a)	12.49
132.2(b)	New
132.2(c)	New
132.3	12.50(a) 2nd sent.
132.4	12.50(d) 3rd sent.
132.5(a)–(c)	New
132.6	12.49
132.11(a)(1)–(2)	New
132.11(b)	12.50(a) 1st sent.
132.11(c)	12.50(b)
132.11(d)	12.50(a) 3rd sent.
132.12(a)–(b)	12.50(d)
132.12(c)	New
132.13(a)(1)–(2)	12.50(e)
132.13(b)	New
132.14(a)–(b)	New
132.14(c)	12.50(f)
132.15	12.50(c)
132.21	12.51
132.22	New
132.23(a)–(b)	12.51(b)
132.23(c)	12.51(c)
132.23(d)	12.51(d)–1st & 2nd sent.
132.24	12.51(d) 3rd sent.
132.25	12.51(f)

This table shows the relation of sections in revised Part 133 to superseded 19 CFR Part 11.

Revised Section	Superseded Section
133.0	None
133.1(a)	11.15(a)
133.1(b)	None
133.2	11.15(a)
133.3	11.15(a)
133.4	None
133.5	None
133.6	None
133.7	11.15(c)
133.11	None
133.12	11.16
133.13	11.16
133.14	None
133.15	None
133.21	11.14
133.22(a)	11.17(a)
133.22(b)	11.17(b)
133.22(c)	11.17(b)
133.23(a)	None
133.23(b)	None
133.23(c)	11.17
133.24	None
133.31(a)	11.19(a)
133.31(b)	None
133.31(c)	11.19(b)
133.31(d)	None
133.32	11.19(a)
133.33	11.19(a)
133.34	None
133.35	None
133.36	None
133.37	None
133.41	11.18
133.42(a) & (b)	11.20(a)
133.42(c)	11.20(b)
133.43(a) & (b)	11.20(c)
133.43(c)(1)	11.20(d)
133.43(c)(2–4)	None
133.44	11.20(e)
133.45(a)	11.21(a)
133.45(b)	11.21(c)
133.45(c)	None
133.46	None
133.51	None
133.52(a)	11.17(c)
133.52(b)	None
133.53	11.17(d)

This table shows the relation of sections in revised Part 134 to superseded 19 CFR Part 11.

Revised Section	Superseded Section
134.0	None
134.1(a)	11.8(a)
134.1(b)	11.8(c)
134.1(c)	None
134.1.(d)	11.8(e)
134.1(e)	None
134.1(f)	None
134.2	11.8(k)
134.3	None
134.4	None
134.11	None
134.12	11.8(f)
134.13	11.8(i)
134.14(a)–(c)	11.8(g)
134.21	None
134.22(a)	11.8(h) & (i)
134.22(b)	11.8(j)
134.22(c)	None
134.22(d)	11.8(i)
134.23(a)	None

Revised Section	Superseded Section
134.23(b)	None
134.24(a)	none
134.24(b)	11.8(j)
134.24(c)(1)	None
134.24(c)(2)	11.8(g)
134.24(d)(1)–(3)	None
134.31	None
134.32	11.10(a) & (b)
134.33	11.10(a)
134.34(a) & (b)	11.10(a)
134.35	11.8(e)
134.36(a) & (b)	11.10(a)
134.41(a)	11.8(a) & (d)
134.41(b)	11.8(d)
134.42	None
134.43(a)	11.8(d)
134.43(b)	11.9
134.44(a)–(c)	11.8(d)
134.45(a)–(c)	11.8(b)
134.45(d)	11.8(a)
134.46	11.8(a)(1 & 2)
134.47	11.8(a)(3)
134.51(a)	11.11(a)
134.51(b)	11.8(k)
134.51(c)	11.11(a)
134.52(a)–(e)	None
134.53(a)(1)–(2)	11.11(b)
134.53(b)	11.11(b)
134.54(a)	11.11(c)
134.54(b) & (c)	11.11(c) & (d)
134.55(a)–(d)	11.8(m)

This table shows the relation of sections in revised Part 141 to superseded 19 CFR Part 8.

Revised Section	Superseded Section
141.0	New
141.1(a)	8.1(a)
141.1(b)	8.1(b)
141.1(c)	8.1(c)
141.1(d)	8.1(b)
141.1(e)	8.1(d)
141.1(f)	8.24(b), 20.6(i)
141.2(a)–(i)	8.2(a)–(i)
141.3	New
141.4	8.3(a)
141.5	New
141.11(a)(1)	8.6(a), 8.7(a)
141.11(a)(2)	8.6(c)
141.11(a)(3)	8.6(g)
141.11(a)(4)	8.6(e)
141.11(a)(5)	8.6(f)
141.11(a)(6)	8.6(a)
141.11(b)	8.6(n)
141.12	8.6(b)
141.13	8.6(m)
141.14	8.6(j)
141.15(a)	8.6(h) & (i)
141.15(b)	8.6(h)
141.15(c)	8.6(i)
141.16(a)	8.7(a)
141.16(b)	8.7(b)
141.17	8.6(k)
141.18(a)–(b)	8.6(l)
141.19(a)	8.18(a)
141.19(b)	8.18(c) & Ftn. 23
141.19(c)	8.18(b)
141.20(a)–(c)	8.18(d)
141.31(a)–(c)	8.19(a)
141.31(d)	8.19(k)
141.32	8.19(a) & Ftn. 26a
141.33	8.19(j)
141.34	8.19(d)
141.35	New
141.36	8.19(g)
141.37(a)–(c)	8.19(e)
141.38	8.19(e)
141.39(a)–(b)	8.19(d)
141.40	8.19(c)
141.41	8.19(b)
141.42	New
141.43(a)–(c)	8.19(a) & (g)
141.44	8.19(i)
141.45	8.19(h)
141.46	8.19(a)
141.51	New
141.52(a)–(i)	8.8(f) & (g), 8.52
141.53(a)–(c)	8.8(h)
141.53(d)	8.8(i)
141.54(a)–(d)	8.6(d)
141.55	8.4(c)
141.61(a)	8.8(a)
141.61(b)	New
141.61(c)	8.8(d)
141.61(d)	8.8(c)
141.61(e)	8.8(b)
141.61(f)	8.8(a)
141.61(g)	8.8(a)
141.61(h)	8.4(b)
141.62(a) & (b)	8.4(a)
141.63	New
141.64	8.4(d) & (g)
141.65	8.20
141.66	8.4(a)
141.67	8.4(a)
141.68(a)	8.4(e)
141.68(b)	8.4(f)
141.68(c)	8.4(g)
141.68(d)	8.4(g)
141.68(e)	8.4(d)
141.69(a)–(c)	8.4(d), (g), & (h), Ftn. 3a to Part 8
141.81	8.11(a)
141.82(a)	8.11(c), 8.12(a)
141.82(b)	8.12(c)
141.82(c)	8.12(b)
141.82(d)	8.12(d), 8.51(a), 8.11(c)
141.83(a)	8.15(a)
141.83(b)	8.15(b)
141.83(c)	8.15(c)
141.84(a)–(e)	8.11(a) & (b)

Revised Section	Superseded Section
141.85	New
141.86(a)	8.13(a)
141.86(b)	8.13(b)
141.86(c)	8.8(e)
141.86(d)	New
141.86(e)	8.13(a)
141.86(f)	8.13(g)
141.86(g)	8.13(f)
141.86(h)	8.13(i) & (j)
141.86(i)	8.13(a) & (h)
141.87	8.13(d)
141.88	8.13(e)
141.89	8.13(h)
141.90(a)	8.21(a)
141.90(b)	8.21(b)
141.90(c)	8.16
141.90(d)	8.21(b)
141.91(a)	8.9(a)
141.91(b)	8.9(b)
141.91(c)	New
141.91(d)	8.9(c), 8.13(c)
141.92(a)–(c)	8.15(d)
141.101(a)–(c)	New
141.102(a)	New
141.102(b)	New
141.102(c)	New
141.102(d)	8.28(c)
141.103	New
141.104	8.40(c)
141.105	8.29(d)
141.111(a)	8.23(a) & (b)
141.111(b)	8.23(a)
141.111(c)	8.23(c) & (d)
141.111(d)	8.23(a)
141.112(a)	Ftn. 20 to Pt. 8
141.112(b)	8.25(a)
141.112(c)	8.25(b)
141.112(d)	8.25(c)
141.112(e)	8.25(d)
141.112(f)	8.25(d)
141.112(g)	8.25(f)
141.112(h)	8.25(e) & (g)
141.113(a)	8.26(c)
141.113(b)	8.26(a)
141.113(c)	8.26(b)
141.113(d)	8.26(d)
141.113(e)	8.26(a), (c), (e)
141.113(f)	New
141.113(g)	New

This table shows the relation of sections in revised Part 142 to superseded 19 CFR Part 8.

Revised Section	Superseded Section
142.0	New
142.1	8.59(a) & (b)
142.2(a)	8.59(c)
142.2(b)	8.59(f)
142.3(a)	8.59(c)
142.3(b)	8.59(g)
142.4(a)–(c)	8.59(d)
142.5	8.59(e)
142.6(a)	8.59(k)
142.6(b)	8.59(k)
142.7(a)	8.59(i) & (j)
142.7(b)	New
142.11(a)–(d)	8.59(g)
142.12	8.59(g)
142.13	8.59(g)
142.14(a) & (b)	8.59(h)
142.15	8.59(i)
142.16	8.59(i)

This table shows the relation of sections in revised Part 143 to superseded 19 CFR Part 8.

Revised Section	Superseded Section
143.0	New
143.1(a)–(c)	8.27
143.2	New
143.3(a) & (b)	8.24(a), 8.28(a), 8.29(a) & (b)
143.11(a)	8.50(b)
143.11(b)	8.50(b)
143.11(c)	8.50(c)
143.12	8.50(a)
143.13(a) & (b)	8.50(d)
143.14	8.50(f)
143.15	8.50(e)
143.16	8.50(e)
143.21(a)–(g)	8.51(a)
143.22	8.51(c)
143.23(a)–(d)	8.51a
143.24	8.51(a)
143.25	8.51(a)
143.26	8.51(a)
143.27	8.51(d)
143.28	8.51(b)

This table shows the relation of sections in revised Part 144 to superseded 19 CFR Parts 8, 18, 19, and 56.

Revised Section	Superseded Section
144.0	New
144.1(a)	8.30(c)
144.1(b)	8.30(f)
144.1(c)	8.30(e)
144.2	8.32(a)
144.3	8.32(c)
144.4	New
144.5	New
144.6(a)	56.1(a) & (b)
144.6(b)	56.1(a), 56.3(c) & (e)
144.6(c)	56.3(b) & (d)
144.7	New
144.11(a)	8.30(a)
144.11(b)	8.30(b)
144.11(c)	8.30(d)
144.12	New
144.13	8.31(a)
144.14	8.31(b)
144.15(a)	8.30(g)
144.15(b)	8.30(h)
144.21	8.23(b) & 8.39(a)
144.22	8.39(a), 18.16(a)
144.23	8.39(c), 18.16(a)
144.24	8.39(a)
144.25	8.39(b)
144.26	8.39(e)
144.27	8.39(d)
144.28(a) & (b)	New

Revised Section	Superseded Section
144.31	8.37(a)
144.32(a)	8.37(b), 18.19(c)
144.32(b)	8.37(b), 8.39(d)
144.33	New
144.34(a)	19.9
144.34(b)	8.33
144.35	New
144.36(a)	18.16(a)
144.36(b)	18.17(b)
144.36(c)	18.16(a)
144.36(d)	18.16(b) & 18.17(a)
144.36(e)	18.17(c)
144.36(f)	18.18(a)
144.36(g)	18.18(b)
144.36(h)	8.36
144.37(a)	8.41, 18.19(a), 18.19(b)
144.37(b)	8.41(d) & 18.19(b)
144.37(c)	8.45
144.37(d)	8.41(b)
144.37(e)	8.43
144.37(f)	8.41(c)
144.38(a)–(c)	8.37(a)
144.38(d)	New
144.38(e)	8.38
144.41(a)–(d)	8.33(a)–(c)
144.41(e)	8.34(a)
144.41(f)–(g)	8.33(b) & (a)
144.41(h)	8.34(b)
144.42(a)–(b)	8.35(a)–(c)

This table shows the relation of sections in revised Part 145 to superseded 19 CFR Part 9.

Revised Section	Superseded Section
145.0	New
145.1(a)–(c)	9.0
145.2(a)–(c)	New
145.3	9.13
145.4(a)–(d)	9.5
145.5	9.10(d)
145.11(a)–(b)	9.1(a)
145.11(c)	9.1(b)
145.11(d)	New
145.12(a)	9.4
145.12(b)	9.3(a) and (d)
145.12(c)	New
145.12(d)	9.3(b)–(c)
145.13(a)–(d)	9.8(a)
145.14(a)–(c)	New
145.21	New
145.22	9.10(a)–(b)
145.23	9.10(b)
145.24	9.10(b)
145.25	New
145.26	New
145.31	9.6(a)
145.32	9.6(b)
145.33	New

Revised Section	Superseded Section
145.34(a)	New
145.34(b)	9.4
145.35	9.3(b)
145.36	9.3(c), 9.9(a) and (b)
145.37(a)	9.7(c)
145.37(b)	9.7(b)
145.37(c)	9.7(a)
145.38	New
145.39	New
145.40(a)–(d)	9.11(b)
145.41	9.3(b), 9.9(a) and (b)
145.42(a)–(b)	9.9(a)
145.51(a)–(b)	9.12(d) and (e)
145.52	New
145.53	9.12(a)
145.54(a)–(c)	New
145.55	New
145.56	New
145.57	9.12(c)
145.58	New
145.59	9.12(d)
145.71(a)–(c)	9.11(a)
145.145.72	9.11(a)

This table shows the relation of sections in revised Part 146 to superseded Part 146

Revised Section	Superseded Section
146.0	146.0
146.1(a)	New
146.1(b)(2), (3), (4), (6), (7), (8), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23).	New
146.1(b)(1)	146.1(a)
146.1(b)(5)	146.1(c)
146.1(b)(9)	146.1.(e)
146.1(b)(10)	146.1(e)(1)
146.1(b)(11)	146.1(e)(2)
146.2	146.2
146.3(a)	146.3
146.3(b)	New
146.4	New
146.5	146.4
146.6	New
146.7	New
146.8	New
146.9	146.5
146.10	146.6
146.11(a), (b), and (c)	146.7 (a), (b), and (c)
146.11(d)	New
146.12	146.8
146.13	New
146.14	New
146.21	New
146.22	New
146.23	New
146.24	New
146.25	New
146.26	New
146.31	146.11
146.32(a)	146..12(a)
146.32(b)(1)	New
146.32(b)(2)	146.12(b)(1)(ii)
146.32(b)(3)	146.12(b)(1)(i)
146.32(b)(4)	146.12(b)(2)
146.32(b)(5)	New
146.32(c) (1), (2) & (4)	146.12(c) (1), (2) & (3)
146.32(c)(3)	New
146.32(d)	New
146.33	146.13
146.34	146.14
146.35	New
146.36	New
146.37	New
146.38	146.15
146.39	New
146.40	New
146.41 (a), (b), and (c)	146.21 (a), (b), and (c) (1) and (2)
146.41(d)	146.21(c)(3)(i) and (v)
146.41(e)	146.21(d)
146.42	146.23
146.43	146.22, 146.24
146.44	146.25
146.51	146.31 (a), (b)
146.52(a)	146.21(f), 146.32(a), 146.33(a)
146.52(b)	146.21(f), 146.32(b), 146.33(b)
146.52(c)	146.32(c)
146.52(d)(1)	New
146.52(d)(2)	146.32(d)
146.52(e)	146.33(b)
146.53 (a), (b)	146.31(c)
146.53 (c), (d), and (e)	New
146.61	146.47(c), 146.48(b)
146.62	New
146.63(a)	146..45, 146.46, 146.48(c)
146.63(b)	146.47
146.63(c)	New
146.63(d)	146.49
146.64(a)	146.48(c)
146.64(b)	146.47(e)(4)
146.64(c), (d)	New
146.65(a)(1)	146.21(c)(3)(iv)
146.65(a)(2)	146.48(e)(1)
146.65(b)	146.48(e)(2)
146.65(c)	New
146.66(a)	146.43(b)(1)
146.66(b)	146.43(b)(1)
146.66(c)	146.43(b)(2)
146.66(d)	New
146.67(a)	146.41
146.67 (b), (c)	146.45(d), 146.46(d)
146.67(d)	New
146.67(e)	146.46(e)
146.68	New
146.69	146.42
146.70(a)	146.47(a)
146.70(b)	146.47(e)(3)
146.70(c)	146.47(e)(4)
146.70(d)	146.47(e)(e)
146.71	New
146.81	New
146.82	New
146.83	New

This table shows the relation of the old sections of Part 146 to the new sections of Part 146.

Revised Section	Superseded Section
146.0	146.0
146.1(a)	146.1(b)(1)
146.1(b)	Removed
146.1(c)	146.1(b)(5)
146.1(d)	Removed
146.1(e)	146.1(b)(9)
146.1(e)(1)	146.1(b)(10)

Revised Section	Superseded Section
146.1(e)(2)	146.1(b)(11)
146.1(f)	Removed
146.2	146.2
146.3	146.3(a)
146.4	146.5
146.5	146.9
146.6	146.10
146.7 (a), (b), & (c)	146.11 (a), (b), & (c)
146.8	146.12
146.11	146.31
146.12(a)	146.32(a)
146.12(b)(1)(i)	146.32(b)(3)
146.12(b)(1)(ii)	146.32(b)(2)
146.12(b)(2)	146.32(b)(4)
146.12 (c)(1), (2) & (3)	146.32 (c) (1), (2), & (4)
146.13	146.33
146.14	146.34
146.15	146.38
146.21 (a), (b), and (c) (1) (2)	146.41 (a), (b), and (c)
146.21 (c)(3), (i) and (v)	146.41 (d); 146.65 (a)(1)
146.21(c)(3)(iv)	146.65(a)(1)
146.21 (c) (3) (ii) and (iii)	Removed
146.21(d)	146.41(e)
146.21(e)	Removed
146.21(f)	146.52 (a) and (b)
146.22	146.43
146.23	146.42
146.24	146.43
146.25	146.44

Revised Section	Superseded Section
146.31 (a) and (b)	146.51
146.31(c)	146.53 (a), (b)
146.32(a)	146.52(a)
146.32(b)	146.52(b)
146.32(c)	146.52(c)
146.32(d)	146.52(d)(2)
146.33(a)	146.52(a)
146.33(b)	146.52(b)
146.41	146.67(a)
146.42	146.69
146.43(a)	Removed
146.43(b) (1)	146.66(b)
146.43(b)(2)	146.66(c)
146.44	Removed
146.45 (a), (b), and (c)	146.63
146.45(d)	146.67 (b), (c)
146.46 (a), (b) and (c)	146.53
146.46(d)	146.67 (b), (c)
146.46(e)	146.67(e)
146.47(a)	146.70(a)
146.47(b), (d), and (e) (1) and (2)	Removed
146.47(c)	146.61
146.47(e)(3)	146.70 (b) and (d)
146.47(e)(4)	146.64, 146.70(c)
146.47(f)	Removed
146.48(a)	Removed
146.48(b)	146.61
146.48(c)	146.63 (a) and 146.64(a)
146.48(d)	Removed
146.48(e)(1)	146.65(a)(2)
146.48(e)(2)	146.65(b)
146.48	Removed
146.49	146.63(d)

This table shows the relation of sections in revised Part 148 to superseded 19 CFR Part 10.

Revised Section	Superseded Section
148.0	New
148.1	10.28
148.2	10.16 & New
148.3	10.23
148.4	New
148.5	10.19(i)
148.6	10.20
148.7	10.27
148.8	New
148.11	10.19(a)
148.12 (a) & (b)	10.19(b)
148.12(c)	New
148.13(a)	10.19(c)(1)
148.13(b)	New, 10.19(c)(3)
148.13(c)	10.19(c)(1)
148.13(d)	10.19(f)
148.13(e)	10.19(d)
148.14	10.19 (b) & (g)
148.15	10.19(h)
148.16	10.19(e)
148.17	10.17(j)
148.18	23.5 (a) & (b)
148.19	23.5(c)
148.21	10.21(a)
148.22	10.19 (a) & (j)

Revised Section	Superseded Section
148.23(a)	10.21(b)
148.23(b)	10.21(b)
148.23(c)	10.21 (c) & (e)
148.23(d)	10.21(k)
148.24	10.21(d), 10.19(f)
148.25(a)	10.21 (f) & (g)
148.25(b)	New
148.26(a)	10.21(l)
148.26(b)	10.21(m)
148.27	10.21(j)
148.31	10.17(a)
148.32	10.42
148.33(a)	10.17(b)
148.33(b)	10.17(e)
148.33(c)	10.17(c)
148.33(d)	10.17(d)
148.33(e)	10.17(b), (h)(2)
148.33(f)	10.17(h) (2)
148.34	10.17(f)
148.35(a)	10.17(g)(1)
148.35(b)	10.17(g)(2)
148.35(c)	10.17(i)(1)
148.36	10.17(h)(1), (i)(2)
148.37	10.17(l)(1)–(3)
148.38	17(m)

Revised Section	Superseded Section
148.39(a)	10.17(n)
148.39(b)	New
148.41	10.18(d)
148.42	10.18(a)
148.43	10.18(f)
148.44	10.18(b)
148.45	10.18(c)
148.46	10.18(e)
148.51	10.21(i)
148.52	1.11, 10.12, fnte. 11
148.53	10.15
148.54	10.14
148.61	New
148.62	10.22(b, 23.4(a), 6.7(g)
148.63(a)	23.4(c)
148.63(b)	New
148.64	10.21(i), 23.4
148.65(a)	10.22(a)
148.65(b)	New
148.66(a)	10.22(e)
148.66(b)	10.22(d), 6.7(g)
148.66(c)	10.22(e), 6.7(g)
148.67	23.4(a), (b)
148.71	New
148.72	10.24
148.73	10.25
148.74	10.26(a), (b), (c), (f)(1)
148.75	10.26a (e), (f)(2)
148.76	10.26e(g)
148.77(a)	10.26a (d), (h), (i)
148.77(b)(1)	10.26a(h)
148.77(b)(2)	New
148.77(c)	10.26a(h)
148.81(a)	New
148.81(b)	10.30a(c)
148.81(c)	New
148.81(d)	New
148.82(a)	New
148.82(b)	10.29(a), (c), & (f)
148.82(c)	10.29(b)
148.82(d)	10.29(e)
148.82(e)	10.29(a) & New
148.83(a)	10.30(b) & New
148.83(b)	New
148.84	10.29(d)
148.85	10.30(c) & (d)
148.86	10.30(a)
148.87(a)	10.30a (b), (d), & (e)
148.87(b)	10.30a (a)
148.88(a)	10.30b (a) & (d)
148.88(b)	10.30b(c)
148.88(c)	10.30b(b)
148.88(d)	New
148.89(a)	10.30a(b), (d), & (e)
148.89(b)	10.30a(f)
148.90(a)	10.30c(a)
148.90(b)	10.30c(a)
148.90(c)	10.30c(b)
148.90(d)(1)(i)	10.30c(b)
148.90(d)(1)(ii)	10.30c(b) & New
148.90(d)(1)(iii)	10.30c(b)
148.90(d)(2)	10.30c(b)
148.90(d)(3)	New
148.90(e)	10.30c(c) & (d)

This table shows the relation of sections in revised Part 151 to superseded 19 CFR Parts 8, 13, and 14.

Revised Section	Superseded Section
151.0	New
151.1	8.22(a)
151.2(a)	14.1(b)
151.2(b)	8.22(b)
151.2(c)	14.1(c)
151.3	8.4(a), 8.5(d), & 8.22(a)
151.4(a)	8.5 (a) & (c)
151.4(b)	8.5 (b) & Ftn. 4
151.4(c)	8.5 (b) (1) & (b) (3)
151.5(a)	8.5(b) (2)
151.5(b)	8.5(b) (4)
151.5(c)	8.5(b) (5)
151.6	8.22(a) & 14.2(a)
151.7(a)	14.2(b) & (d)
151.7(b)	14.2 (b) & (d)
151.7(c)	14.2(b)
151.7(d)	14.2(c)
151.8	14.2(e)
151.9	14.2(f)
151.10	14.2(g)
151.11	8.26(b) & 14.2(h)
151.12	None
151.21(a)	Part 13, Ftn. 1
151.21(b)	Part 13, Ftn. 2
151.22	13.1(a)
151.23	13.1(b)
151.24	13.2(a)
151.25	13.9
151.26	13.3
151.27	13.2(a)
151.28(a)	13.5(a)
151.28(b)	13.5(b)
151.29	13.2(d)
151.30	13.7
151.31(a)	13.8(a)
151.31(b)	13.8(a)
151.31(c)	13.8(b)
151.41	13.10(b)
151.42(a)–(f)	10(a) (2) (i)–(vi)
151.43(a)	13.10(a) (2)(ii)
151.43(b)	13.10(a) (5)
151.43(c)	13.10(a) (5) (iv)
151.43(d)	13.10(a) (5) (iv)
151.43(e)	13.10(a) (4)
151.43(f)	13.10(a) (3)
151.44(a)–(c)	13.10(a)(1)
151.45(a)	13.10(c)
151.45(b)	13.10(d)
151.45(c)	13.10(e)

Revised Section	Superseded Section
151.46	13.10(f)
151.47 (a)–(d)	New
151.51 (a) & (b)	8.46 (a)–(c)
151.52(a)	8.48(a) & (b)
151.52(b)	8.48(c)
151.52(c)	8.48(d)
151.53	8.48
151.54	8.48
151.55	8.48(h)
151.61(a)	13.11(a)
151.61(b)	13.11(b), 13.14(f)
151.61(c)	13.14(a) (1)
151.61(d)	13.14(a) (2)
151.62(a)	13.12(a)
151.62(b)	13.12(b)
151.62(c)	13.12(c)
151.62(d)	13.12(d)
151.62(e)	13.12(e)
151.62(f)	13.12(f)
151.63	13.13(a)
151.64	13.13(a)
151.65	13.13(b)
151.66	13.13(e)
151.67	13.13(d)
151.68(a)	13.14(b)(1)
151.68(b)	13.14(b)(2)
151.68(c)	13.14(b)(3)
151.69(a) & (b)	13.14(b)
151.70	13.14(c)
151.71(a)	13.14(d)
151.71(b)–(e)	13.14(e)
151.72(a)–(d)	13.15(a), 13.15(b)
151.73(a)–(c)	13.15(c)
151.74	13.15(d)
151.75	13.15(d)
151.76(a)–(c)	13.16 & Ftn. 7 to Pt. 13
151.81	13.18(a)
151.82(a)	13.17(a)
151.82(b)	13.17(b)
151.82(c)	13.17(c)
151.83	13.18(b)
151.84	13.18(c)
151.85	13.18(d)
151.91	13.19
151.101	13.20(a)
151.102(a)	13.20(b)(1)
151.102(b)	13.20(b)(2)
151.103	13.20(c)
151.104	13.20(a)
151.111	14.2(i)

This table shows the relation of sections in revised Part 152 to superseded 19 CFR Parts 8, 14, and 16.

Revised Section	Superseded Section
152.0	New
152.1(a)	14.3(c) & Ftn. 6
152.1(b)	Part 14, Ftn. 6
152.1(c)	14.3(b)
152.2	8.29(c)
152.3	16.7
152.11	New
152.12	New
152.13(a)	16.9(b)
152.13(b)	16.9(a)
152.13(c)	16.9(a) & (c)
152.13(d)	16.9(a)
152.14(a)	16.10a(a)
152.14(b)	16.10a(b)
152.14(c)	16.10a(c)
152.14(d)	16.10a(c)
152.15(a)	16.10(a), 16.10a(c) & (d), & Ftn. 11a
152.15(b)	16.10(b)
152.15(c)	16.10(c)
152.16(a)	16.10(d)
152.16(b)	16.10(e)
152.16(c)	16.10(f)
152.16(d)	New
152.16(e)	16.10(g)
152.17	16.10(h)
152.21(a)–(c)	14.3(a)
152.22	14.3(c)
152.23	14.3(d) & Ftn. 7
152.24(a) & (b)	New
152.25	14.3(f)
152.26(a)	14.4(a)
152.26(b)	14.4(b)
152.26(c)	14.4(c)
152.26(d)	14.4(d)
152.26(e)	14.4(e)
152.31(a)	New
152.31(b)	New
152.31(c)	14.5(l)
152.32	14.5(h)
152.33	14.5(j)
152.34	14.5(c)
152.35	14.5(a)
152.36	14.5(k)
152.37	14.5(d)
152.38	14.5(e) & (b)
152.39	14.5(i)
152.40	14.5(f)
152.41	14.5(m) & Ftn. 13
152.42(a)–(c)	14.5(n)
152.43	14.5(o)

This table shows the relation of sections in revised Part 153 to the sections in the present Part 153.

Old section	New section
153.0	153.1
153.1	153.2
153.2	153.3
153.3	153.4
153.4	New
153.5	New
153.6	153.5(a)
153.7	153.5(b)
153.8	153.6
153.9	153.7
153.10	153.8
153.11	153.9
153.12	153.10
153.13	153.11
153.14	153.12
153.15	153.18
153.16	153.13
153.17	153.16
153.18	153.17
153.21	153.23(a)
153.22	153.23(b)
153.23	153.23(c)
153.25	153.25
153.26	153.26
153.27	153.27
153.28	153.28
153.29	153.29
153.30	153.30

Old section	New section
153.31	153.31
153.32	153.32
153.33	153.15
153.34	153.33
153.35	153.34
153.36	153.35
153.37	153.36
153.38	New
153.39	New
153.40	153.37
153.41	153.38
153.42	153.39
153.43	154.40
153.44	153.41
153.45	153.42
153.46	153.43
153.48	153.48
153.49	153.49
153.50	153.50
153.51	153.51
153.52	153.52
153.53	153.53
153.54	New
153.55	153.54
153.56	153.55
153.57	153.56
153.64	153.64

This table shows the relation of sections in revised Part 158 to 19 CFR Part 15.

Revised Section	Superseded Section
158.0	New
158.1(a) and (b)	15.8(c)
158.2	15.8(a)(1)
158.3	15.8(a)(2)
158.4	15.8(a)(2) and (d)
158.5(a) and (b)	15.8(a)(3)
158.6	15.8(b)
158.11(a)	15.10(a)
158.11(b)	15.10(b)
158.12(a) and (b)	New
158.13(a)	15.7(a)
158.13(b)	15.7(b)
158.13(c)	New
158.14(a) and (b)	15.2 and footnote 3
158.21	15.1(a) footnote 2
158.22	15.1 footnote 1
158.23	15.1(a)
158.24	15.1(b)
158.25	15.1(b)

Revised Section	Superseded Section
158.26(a)–(c)	15.1(c)
158.27(a)–(c)	15.1(d)
158.28	15.1(g)
158.29	15.1(e)
158.30(a) and (b)	15.1(f)
158.41	15.5
158.42(a)–(e)	15.3(a) and (b)
158.43(a)	15.4(a)
158.43(b)	15.4(a)
158.43(c)	15.4(c)
158.43(d)	New
158.43(e)	15.4(d)
158.44(a)	15.6(a)
158.44(b)	15.6(a)
158.44(c)	15.6(b)
158.45(a)	8.49(a) and (c)
158.45(b)	New
158.45(c)	8.49(b)
158.45(d)	New

This table shows the relation of sections in revised Part 159 to superseded 19 CFR Parts 12, 16, 18.

Revised Section	Superseded Section
159.0	New
159.1	Part 16, Ftn. 2
159.2	16.1

Revised Section	Superseded Section
159.3(a) & (b)	16.2(a)
159.4(a)	16.5(d)
159.4(b)	16.2(b)

Revised Section	Superseded Section
159.5	16.3(d)
159.6(a)–(d)	16.2(c)
159.7(a)	16.3(c) & (d) 18.18(c)
159.57(b)	16.10(h) & 18.18(c)
159.7(c)	18.18(c)
159.8	New
159.9(a)	16.2(d) & 16.12(a)
159.9(b)	16.2(d) & (g)
159.9(c)	16.2(d)
159.10(a)	16.12(b)
159.10(b)	16.12(b)
159.10(c)	16.12(c)
159.21	New
159.21(a)	16.5(a)
159.21(b)	16.5(d)
159.21(c)	16.3(d)
159.22(a)	16.6(a)
159.22(b)	16.5(b), 16.6(b)
159.22(c)	16.6(c)
159.22(d)	16.6(d)
159.22(e)	16.6(e)
159.22(f)	16.5(c)
159.31	16.4(e)(1)
159.32	16.4(b)

Revised Section	Superseded Section
159.33	16.4(a) & 16.4(e)(1)
159.34(a) & (b)	16.4(d)
159.35	New
159.36	16.4(e)
159.36(a)	16.4(e)
159.36(b)	16.4(e)(3)
159.36(c)	16.4(e)(4) & (f)
159.36(d)	16.4(e)(5) & (f)
159.37(a)–(c)	16.4(c)
159.38	16.4(c)
159.41	New
159.42	16.19
159.43	16.20
159.44	16.25
159.45	New
159.46(a)	16.18(a)
159.46(b)	16.18(b)
159.47(a)–(f)	16.24(a)–(f)
159.51	New
159.52	16.3(c) & (d)
159.53	16.3(b)
159.54	16.3(a)
159.55(a)–(b)	12.6(a) & (b)
159.56	New
159.57	New

This table shows the relation of sections in revised Part 161 and 162 to 19 CFR Part 23.

Revised Section	Superseded Section
161.0	New
161.1	23.35
161.2(a)	23.31(a)–(c)
161.2(b)	23.31(d)
161.3	23.21(a); 23.8
161.4	23.30
161.5	23.26
161.11	23.27(a)
161.12	23.27(b), (c) and (e)
161.13	New
161.14	23.27(d)
161.15	New
162.0	New
162.1	23.28
162.2	23.29
162.3(a)	23.1(a)
162.3(b)	23.1(c)
162.4	23.1(c)
162.5	23.1(d)
162.6	23.1(e)
162.7	23.1(d)
162.11	New; 23.11(g)
162.12	23.11(e) and (f)
162.13	23.11(d)
162.14	23.11(c)
162.15	23.11(a)
162.21(a)	23.11(a)
162.21(b)	23.11(a)
162.21(c)	23.11(b)
162.22	23.3(a)–(d); 23.10
162.31(a)	23.23(a)
162.31(b)	23.23(b)
162.32(a)	23.23(c)

Revised Section	Superseded Section
162.32(b)	23.21(b)
162.41(a)	23.6(a) and (c)
162.41(b)	23.6(b)
162.41(c)	23.6(d)
162.42	23.17(d)
162.43(a)	23.12(a) and (b)
162.43(b)	23.12(e)
162.43(c)	23.12(d) and (c)
162.44(a)	23.14(b)
162.44(b)	23.14(a)
162.44(c)	23.14CM
162.45(a)	23.16(a)
162.45(b)	23.16(a)
162.45(c)	New
162.45(d)	New
162.46(a)	23.17(a)
162.46(b)	23.16(b)
162.46(c)(1)	23.17(b) and (c)
162.46(c)(2)	23.19(a)
162.46(d)	23.19(b) and (c)
162.47(a)	New
162.47(b)	23.13(a)
162.47(c)	23.13(b)
162.47(d)	23.21(c)
162.48	23.18
162.49(a)	23.21(a)
162.49(b)	23.22
162.50(a)	New
162.50(b)	23.19(a)
162.50(c)	23.19(b)
162.51	23.20(a) and (b)
162.61	23.9(i) and (k)
162.62	23.9(h)
162.63	23.9(b)

Revised Section	Superseded Section
162.64	23.9(i)
162.65(a)	23.9(b)
162.65(b)	23.9(a)
162.65(c)	23.9(f) and (g)
162.65(d)	23.9(f)
162.65(e)	23.9(e)
162.66	23.9(c) and (d)

This table shows the relation of sections in revised Part 171 to 19 CFR Part 23.

Revised Section	Superseded Section
171.0	None
171.1(a)	23.23(d)
171.(b)	23.23(c)
171.11	23.24(a)
171.11(e)	None
171.12(a)	23.24(a)
171.12(b)	23.23(c)
171.12(c)	23.24(a)
171.13(a)	23.24(a)
171.13(b)	23.24(b)
171.21	23.25(a)
171.22(a)	23.25(b)
171.22(b)	23.25(c)
171.22(c)	23.34 (a) & (b)
171.31	23.25(e)
171.32	23.23(c)
171.33	23.25(d)
171.41	None
171.42	23.24(c)
171.43	23.24(c)
171.44	23.24(d)

This table shows the relation of sections in revised Part 172 to 19 CFR Parts 8, 10, 18, and 25.

Revised Section	Superseded Section
172.0	None
172.1	None
172.2(a)	25.15(e)
172.2(b)	None
172.11(a)	None
172.11(b)	None
172.12(a)	None
172.12(b)	None
172.12(c)	None
172.21	None
172.21(a)	25.17(g)
172.21(b)	10.39 (e) & (f), 10.92(d), 11.11(d), 18.8(d), 21.8(c)
172.22(a)	25.17(a)
172.22(b)	25.17(b)
172.22(c)	25.17(c)
172.22(d)	8.59(j)
172.23	None
172.31	25.19
172.32	None
172.33	25.17(h)

This table shows the relation of sections in revised Part 191 to Part 22.

Revised Section	Superseded Section
191.0	New
191.1	New
191.2	New
191.3	22.41
191.4	22.1
191.5	22.46
191.6	22.45
191.7	22.44
191.8	New
191.9	New
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